Autumn 2023

R3, the Association of Business Recovery Professionals | **https://www.r3.org.uk/technical-library/recovery/**

Association of Business Recovery Professionals
R3
Rescue
Recovery
Renewal

RECOVERY

Damage control

Adrenaline-charged weekend for bank 'plan B' liquidators

Tech restructurings: avoiding disaster

Social media: act early to weather storm

Restructuring plans: structural shift needed

Charities: trading subsidiaries pose special challenge

SURVEY: ASSET REALISATION SERVICES

IPS Cloud

The future of insolvency & restructuring software

Designed specifically for Insolvency Practitioners, IPS Cloud provides an end to end platform delivering a cost-effective way to manage insolvency cases

- Increase efficiency
- Ensure regulatory compliance
- Access anytime, anywhere
- All-in-one case management

turnkey-ips.com
enquiries@turnkey-ips.com

Asia-Pacific: +617 2104 9050
UK Regions: +44 141 644 5444

Powered by turnkey

What do you think?

Readers' views are welcome. Have an opinion about a burning issue? Want to comment on articles or *Recovery* itself?

Please contact me at editor@r3.org.uk.

> **Inflation is starting to fall, but interest rates continue to increase and this appears to be causing further distress in the economy. This gives a further opportunity for our industry to demonstrate its value**

From the editor

I hope you had a good summer and managed to get away from the cold and wet UK.

What have you missed? Well inflation is starting to fall, but interest rates continue to increase and this appears to be causing further distress in the economy, as demonstrated by the Wilko administration.

This gives a further opportunity for our industry to demonstrate its value in controlling and mitigating the current damage that we are in seeing in the economy.

The theme of this edition is therefore damage control and our role in it. Mike Pink at Interpath demonstrates this role in his article on his preparation for a proposed insolvency process of Silicon Valley Bank UK.

Stuart Alford and our own Howard Morris explore the role of restructuring professionals in the technology sector and David Holland at the IPA looks at how we should be advertising our services.

Undoubtedly a crucial part of our role centres around a communications strategy and how we manage messages on our activities and with creditors on social media with so much misinformation about. Steve Dunne at Digital Drums gives us his advice on that topic.

The last few months have seen various decisions on restructuring plans. Jennifer Jones and Rachael Markham at Squire Patton Boggs look at how to involve HMRC in the process and Tibor Barna at Capital Agents looks again at the availability of plans to SMEs. Malcolm Weir at the PPF looks at the effect of plans on PPF protected pensions.

Peter O'Donnell of New South Law explains why our profession is needed to help victims of finance scams and help pursue malfeasant directors of regulated companies. Mark Darby at Evelyn Partners questions the CCAB guidance on AML for insolvency practitioners.

We also look at restructuring in the charities sector. David Fendt, Clare Mills, Adam Stephens and Pippa Garland share their experiences, and Sam Dixon at Womble Bond Dickinson looks at the challenges involved in subsidiaries of charities.

Alexandra Davies at Menzies looks at the importance of the experience and cost effectiveness of instructing the right valuer as a precursor to the topic of the *Recovery* survey.

Hopefully all of the above will end your summer on a high!

Neil Smyth is a partner at Mills & Reeve and is the editor of *Recovery*

Regulars

3 From the editor
Neil Smyth
Inflation is starting to fall, but interest rates continue to increase and this appears to be causing further distress in the economy

6 President's column: Our profession in the spotlight
Nicky Fisher
Nicky Fisher looks forward to R3's packed autumn and winter calendar of events and pays tribute to one of R3's founding fathers and first president

54 Advertisers' index

R3 matters

53 View from the lobby
Stuart McBride
An update on R3's policy work on IP and fintech regulation, and its lobbying over new legislation and director disqualifications

54 R3 contacts

Legal updates

8 Legal Q&A
Albert McClelland | Rebecca Stratton
Your insolvency queries answered

9 Recent case summaries
Andrew Brooke | Giselle McGowan
The latest insolvency update

10 Plan companies should not seek to wipe HMRC debt entirely
Jennifer Jones | Rachael Markham
Recent cases have started to show what is needed to persuade a court to cram down HMRC and sanction a restructuring plan

Dates for your diary

7 R3's events and conferences

35

Survey: Asset realisation services

36 Experience and cost-effectiveness are key when choosing a valuer
Alexandra Davies
Asset valuations are the bedrock of effective IP decision-making
37 Who's who
41 Financial asset recovery services
46 Business asset valuation & disposal services
50 Buyers' guide

29

Sustainability
Recovery magazine is fully recyclable, and has been printed using vegetable inks, and is made of FSC®-certified and other controlled material. FSC certification confirms that the forest is managed in a way that preserves biological diversity, including maintaining high conservation values and monitoring the environmental and social impacts of the forest management. The paper has also been carbon balanced, as certified by the World Land Trust. Carbon Balanced Paper is an initiative that offsets the carbon emissions of printed media, and also supports the protection of the world's most biologically significant and threatened habitats. The wrap used to mail the magazine is biodegradable.

WORLD LAND TRUST™
www.carbonbalancedpaper.com
CBP020472

MIX
Paper from responsible sources
FSC® C013417

Editor editor@r3.org.uk

Theme: Damage control

12 **Adrenaline-charged weekend for stand-by team preparing 'plan B'**
Mike Pink
Silicon Valley Bank UK was on the cusp of a bank insolvency procedure after the collapse of its US parent

14 **IPs and insolvency lawyers well placed to help avoid disaster**
Stuart Alford | Howard Morris
The sooner management teams start planning for the worst, the greater their chance of steering successfully through the crisis

16 **Adhering to standards builds credibility and client trust**
David Holland
IPs should not only ensure their own advertising is compliant, but also flag other concerning advertising content to the media platform and their RPB

18 **Insolvent firms must act early to weather social media storm**
Steve Dunne
Strategy, systems and training can help turn the tide for a business and its brand when negative information spreads online

Features

20 **Structural shift needed to make RPs more cost-effective**
Tibor Barna
How to make restructuring plans more viable for SMEs

22 **Finance scam victims need more help from IPs and regulators**
Peter O'Donnell
Misfeasant directors of regulated companies know most IPs expect only the regulator will hold them accountable, which is a green light to act dishonestly

25 **PPF-protected pensions unlikely to be compromised by plans**
Malcolm Weir
Restructuring plans work for the employer, but a cram down of defined benefit scheme debt appears contrary to Parliament's intentions

26 **CCAB's guidance contains questionable recommendations**
Mark Darby
The risks identified by the CCAB on AML and CTF are generally irrelevant for the insolvency profession

29 **'Mission vs mammon' dilemma needs emotional intelligence**
David Fendt | Clare Mills | Adam Stephens
IPs helping charities in financial difficulty need to recognise the sector's unique pressures and characteristics

32 **Trading subsidiaries pose special set of challenges for advisers**
Sam Dixon
Managing conflicts of interest between a charity and its subsidiary is one of many issues to be dealt with if the subsidiary gets into difficulty

Managing editor Matt Jukes
T: 020 7841 5963
E: matt.jukes@klarents.com

Advertising Ben Nelmes
T: 020 7841 5962
E: ben.nelmes@klarents.com

Production Millie Daltrey
T: 020 7841 5961
E: millie.daltrey@klarents.com

Recovery is the quarterly magazine of R3, the Association of Business Recovery Professionals, 3rd Floor (East), Clerkenwell House, 67 Clerkenwell Road, London EC1R 5BL.
T: 020 7566 4200
E: association@r3.org.uk
www.r3.org.uk

Back issues of *Recovery*
Recovery is distributed to R3 members as part of their membership benefits. After an issue of the magazine has been sent to members, a PDF of the previous issue is uploaded onto the R3 website.
www.r3.org.uk/technical-library/recovery/recovery-magazine

Published on behalf of R3 by:
Klarents Media,
2nd Floor, 18 Hatton Place,
London EC1N 8RU
T: 020 7841 5960
www.klarents.com

Our profession in the spotlight

Nicky Fisher looks forward to R3's packed autumn and winter calendar of events and pays tribute to one of R3's founding fathers and first president

The first three months of my presidency have flown by – as I expected them to – in a whirlwind of meetings, interviews and events.

The R3 team is preparing for a sprint finish to 2023 (and discussions are starting about 2024 already) with a mixture of events, courses and campaigns covering a variety of different areas and issues.

The profession is still very much in the media and political spotlight – with both the economic crime and corporate transparency bill's passage through the Lords and a recent Westminster Hall debate containing discussions and legislation about the profession, its work and its concerns. Alongside a mix of rising insolvency numbers and high-profile cases, the profession is receiving more than its fair share of column inches.

Given that we are expecting announcements on the future of regulation and the review of the personal insolvency framework as soon as parliamentary time allows, and that the economic situation won't clear up overnight, this isn't something I suspect will change in the near future.

> **"My personal highlights were from the Scottish Enterprise Business Forum session, which looked at how we can work to help rescue Scottish businesses, and the nextgen committee's discussion about how AI will affect the profession"**

On the road

One of the highlights of every president's term of office is going to the wide range of events that R3 puts on to meet members from across the country and the profession.

In June, I headed 'north of the border' for the Scotland Forum to learn more about the challenges faced by the profession there. My personal highlights were from the Scottish Enterprise Business Forum session, which looked at how we can work with them to help rescue Scottish businesses, and the nextgen committee's discussion about how AI will affect the profession and their working lives in the future.

> **"Ian was one of the founding fathers of R3 – and set a high bar as our inaugural president. In his 15 months in office, he attended as many of the regional and national meetings as possible – something every president since has made an effort to achieve"**

A month later I was at the R3-Insol Europe Restructuring Forum in London, which was a superb opportunity to learn more about the issues faced by our restructuring colleagues from within and outside the UK.

July also saw R3 hold its Contentious Insolvency and Creditors Forum, which saw 120 delegates enjoy a programme that included a discussion on the impact of the *Prezzo* ruling on the restructuring plan market, six barristers take part in a 'case off' (an interesting way of getting up to speed with case law!), and a session on how creditors and the profession can better work together – led by people from the creditors' side of the fence.

Coming up

In September we have our Eastern Forum which will cover a range of issues including franchising, the hotel industry, and updates from HMRC and the RPBs, and for the Northern Conference, which will look at topics including the care sector and AI's impact on the profession.

October will see the return of the R3 Business Lunch, which is always a great opportunity to meet with members from across the country and to learn more about the challenges they face in their regions, nations and areas of specialism.

Also taking place that month is the Training Academy's Personal Insolvency Forums in Huddersfield and London, which will provide insights into areas like mental health and the ethics around advertising personal insolvency services and processes.

November will see the return of the SPG Forum. Coming from a smaller practice, this is an R3 event that I'm very familiar with and very much looking forward to. Keep an eye out for the programme announcement!

Remembering Ian Bond

As I was writing this column, I learned the sad news that Ian Bond, R3's first president, had passed away at the age of 86.

Ian was one of the founding fathers of R3 – and set a high bar as our inaugural president. In his 15 months in office, he attended as many of the regional and national meetings as possible – something every president since has made an effort to achieve – building relationships with the RPBs and the accountancy bodies across the UK.

He also represented R3 internationally, attending conferences in the US, Canada, Europe and Russia, and laid the foundations for our representation work, regularly meeting with the Insolvency Service, the then Department of Trade and Industry, and members of parliament, as well as giving countless press and broadcast interviews to help improve understanding of the profession and its work.

When asked about his presidency for the 30th anniversary edition of *Recovery* magazine, Ian said one highlight was the first annual dinner at the Guildhall, where he delivered a speech from the same top table that every prime minister and Lord Mayor of London had, and has done, throughout history.

Ian set a high standard for the profession, and every president since, to follow.

Nicky Fisher is a partner at Herron Fisher and R3 president

SPG Forum 2023

1-3 November 2023 | The Belfry, Sutton Coldfield

Leading the way for smaller practices

Programme highlights

The Insolvency Service
Dean Beale, CEO and Inspector General

HMRC
Myrtle Lloyd,
Director General Customer Services

Plus
Speakers from the **IPA** and **ICAEW** and sessions on legal updates, the state of the economy, anti-money laundering and asset tracing and forensic investigation.

Main sponsor
turnkey

To register go to www.r3spg.co.uk or email the team events@r3.org.uk

Forthcoming R3 events 2023

21
R3 Eastern Forum
Norwich
21 September 2023

25
Southern & Thames Valley New Professionals Bowling Event
Southampton
25 September 2023

27
The Big London Quiz
London
27 September 2023

6
R3 Business Lunch
London
SOLD OUT
6 October 2023

11
Scotland Annual Dinner
Glasgow
11 October 2023

12
Personal Insolvency Forum
Huddersfield
12 October 2023

To view the full range of R3 networking events and conferences please visit www.r3.org.uk/events-training

Legal Q&A

Albert McClelland and Rebecca Stratton answer your insolvency queries

Q What is the best way of maximising the realisation of intellectual property for creditors?

A The nature of the intellectual property (IP) will dictate how best to extract best value. IP refers to something created by the mind, such as an invention, an artistic work or symbol, and which may comprise patents, copyrights, designs, trademarks and trade secrets. Whether the IP is of value is highly dependent on the company's areas of business. For example, is it an innovation, a unique process or a brand?

Investigation of the company's IP may involve searching the UK and international IPO registers to identify any existing registered patents and trademarks, establishing ownership of domain names and other identifiable IP, and a careful review of books and records; how did the company account for IP? Due to the 'intangible' nature of IP, and that much IP is not capable of being registered, practitioners are often reliant on information provided by directors and employees. Care should thus be taken and often specialist agents and valuers should be appointed at the earliest opportunity.

Asserting the company's rights to IP early and protecting those rights (by way of infringement proceedings if necessary) will help protect the value of the IP, pending any sale.

It is also worthwhile identifying any IP licences held by the company. Licences that permit the company to use IP rights owned by others can often hold value and can have significant impact on the realisable value of the company's other assets. What form of licence was granted? By whom? Was it terminable or in perpetuity?

Complications can often arise because much know-how and many trade secrets are essentially held in the minds of former employees or directors. The value of IP of this nature would be better preserved by the sale of the business as a going concern, as a sale of the IP on break-up basis will be worth considerably less without the employees' know how. The nature of the IP may thus dictate the choice of insolvency process. However, it is often the case that an owner/inventor has no intention of working for someone else, and this may limit opportunities to realise full value. As a corollary of this it would be prudent for the office-holder to continue to monitor whether the company's IP is subsequently being used by any competitor business, especially in circumstances where they have hired former employees.

Our advice is to act swiftly to identify IP and take steps to protect the asset. Healthy scepticism of any owner/director's valuation of IP should be adopted, as they are likely to have talked up IP value pre-insolvency and then seek to persuade all and sundry that it is valueless post-insolvency.

> **"Healthy scepticism of any owner/director's valuation of IP should be adopted, as they are likely to have talked up IP value pre-insolvency and then seek to persuade all and sundry that it is valueless post-insolvency"**

Q What level of investigation is necessary in respect of a proof of debt lodged by a connected company?

A Generally, such a proof of debt will accord with the inter-company debt position evidenced in the company's books, and limited investigation should establish the nature and *bona fides* of the debt. However, there are circumstances that will require an insolvency practitioner to conduct a more in-depth analysis.

An example of this was recently seen in the case of *Re C.C.T. Logistics (in liquidation)* (CCT). The case arose from an application challenging the decision to allow a connected company (CCI) to vote in respect of debt purportedly arising from CCI's discharge of a debt owed by CCT to a third party made after the commencement of the liquidation but before the decision date to appoint the liquidator. This was important as the vote was determinative of the liquidator's appointment.

While the payment of a third-party debt may give rise to right of subrogation and ability to claim, care must be taken to ensure that the payment made by a connected company is not simply a 'voluntary' payment creating no obligation on the insolvent company to repay. The insolvency practitioner should thus investigate the circumstances giving rise to the payment, including whether:

- There was a request by the insolvent company for payment to be made;
- The insolvent company authorised the payment;
- The insolvent company was given the opportunity to refuse the benefit of the payment; or
- The insolvent company incurred an obligation to the payor as a result of the payment.

In the case of CCT, the court considered that in the circumstances the payment was voluntary, and thus the connected company had no entitlement to vote; with the liquidator being removed from office. A failure to investigate what appears to be an accepted debt can lead to challenge and significant consequences for the insolvency practitioner.

Albert McClelland and **Rebecca Stratton** are solicitors at Howard Kennedy

Recent case summaries

The latest insolvency update from Andrew Brooke and Giselle McGowan

Hunt v. Singh [2023] EWHC 1784 (Ch)

The claimant, the liquidator of the company, appealed against a decision of ICC Judge Prentis in *Hunt v. Balfour-Lynn & Ors*, where claims for breaches of fiduciary duty against the defendant, one of the company's directors, were dismissed in their entirety.

The company had engaged in a tax avoidance scheme from 2002-2010.

From 2005 when HMRC first made an offer to the participants in the scheme to pay unpaid NIC until 2011, when it succeeded in the Court of Appeal in recovering unpaid tax in an identical case, it had become increasingly clear that a potential claim by HMRC lay against the company. It was not in dispute that the company would have been insolvent as a result of this tax liability throughout the relevant period.

Applying the test set out in *Sequana [2019] EWCA Civ 112*, Judge Prentis had asked whether, at the relevant time, the directors "… ought to have realised that the company was probably likely to be or become insolvent." The judge had answered the question in the negative, relying *inter alia* upon credible advice received from the company's accountants about the soundness of the scheme, thus dismissing the claim.

On appeal, Mr Justice Zacaroli considered the matter in light of the decision in *Sequana [2022] UKSC 25*. He noted that while the Supreme Court had held that the duty toward company creditors does not arise when there is merely a 'real and not remote' risk of insolvency, the justices had differed about the point at which the duty did arise. Crucially, the *Sequana* line of authority (on which Judge Prentis had relied) concerned the duty of a director to creditors before a company was actually insolvent.

In this instance, the company was insolvent at all material times, because the liability toward HMRC, although disputed at the time, was not contingent but actual. Therefore, Justice Zacaroli considered that the lower threshold of knowledge (which had been rejected by the Supreme Court) should apply: "Where a company is faced with a claim to a current liability of such a size that its solvency is dependent on successfully challenging that claim, then the creditor duty arises if the directors know or ought to know that there is at least a real prospect of the challenge failing."

The judge noted that this lower threshold is tempered by adopting a nuanced approach to the scope of the duty owed toward creditors. That will depend in each instance upon the act in question, its consequences and the chances of the company's trading back to solvency or avoiding liability.

Philipp v. Barclays Bank Plc [2023] UKSC 25

The Supreme Court clarified the 'Quincecare duty' in the context of authorised push payment fraud.

The Quincecare duty is not a special rule of law but simply part of the law of agency, being an application of the general duty of care owed by a bank to interpret, ascertain and act in accordance with its customer's instructions.

> **"Quincecare duty will be of no utility where a bankrupt or company director has authorised a payment having fallen victim of the fraud of a third party"**

In *Barclays Bank v. Quincecare Ltd [1992] 4 All ER 363*, the Court of Appeal had erred in considering that a bank's duty of care could conflict with its duty to execute a valid payment order. It cannot, since the duty of care only arises where the validity or content of the customer's instruction is unclear (or there is a choice as to how it should be executed). This error stemmed from the mistaken premise that an agent who is acting dishonestly and in fraud of their principal is acting with actual authority. They are not.

Once that is understood, the justification for the conclusions in the Quincecare line of cases is clear. The authority conferred on an agent by a customer of a bank does not include authority to act dishonestly in pursuit of the agent's interests and in fraud of the customer. An agent acting thus lacks actual authority to give instruction on the customer's behalf. They will still have apparent authority to do so by virtue of the customer's representation to the bank that the agent is authorised to give payment instructions on their behalf. But not if there are circumstances suggestive of dishonesty apparent to the bank that would cause a reasonable banker to make inquiries to verify such authority before executing an instruction. In such circumstances the bank's duty to exercise reasonable care and skill in and about executing the customer's instructions requires it to make inquiries to ascertain whether the instruction given is one actually authorised by the customer. If the bank executes the instruction without inquiry, it will be acting in breach of duty and the instruction will not bind the customer.

These principles apply wherever one person is given authority to give payment instructions to a bank on another's behalf. However, they have no application where the customer – a victim of fraud – gives the payment instruction. In such a situation, the validity of the instruction is not in doubt provided the instruction is clear, no inquiries are needed to clarify or verify what the bank must do, and the bank's duty is to execute the instruction.

In the insolvency context, this restricts the utility of Quincecare duty for potential recoveries against banks to situations where a payment instruction has been given by an agent of the insolvent person without actual authority (for example, acting dishonestly in fraud of the insolvent person) or apparent authority (for example, where there are circumstances putting the bank on inquiry). It will be of no utility where a bankrupt or company director has authorised a payment having fallen victim of the fraud of a third party.

Andrew Brooke and **Giselle McGowan** are barristers at 9 Stone Buildings

Plan companies should not seek to wipe HMRC debt entirely

Recent cases have started to show what is needed to persuade a court to cram down HMRC and sanction a restructuring plan, say **Jennifer Jones** and **Rachael Markham**

We know that it is possible to cram down HMRC using restructuring plans, but not without good reason. In a battleground that ultimately turns on individual circumstances, there are some general lessons we can learn from recent cases that might assist in persuading a court to exercise its discretion to cram down.

Pre-plan preparation

Some of the recent criticisms levied against plans by HMRC stem from a lack of engagement by plan companies. Where HMRC is a key stakeholder, ensuring that it is engaged from the outset (even if not onside) will put a plan company in a better position to persuade the court to cram the plan down on HMRC if it will not support it.

Factors that have weighed against cramming down HMRC include the age and size of accrued tax debts as well as the historic relationship between HMRC and the restructuring plan company. Where the plan company has a poor relationship with HMRC – for example where it has a history of failed time-to-pay arrangements (TTP) – the plan company should not expect the court to force HMRC's hand to enter a TTP or wipe out Crown debt entirely.

If the company is part of a wider group, the tax position of the entire group will also be relevant – including the size and age of the group debt.

Engaging with HMRC and agreeing a new TTP alongside the plan, or at least getting an agreement in principle, will reduce the risk of challenge. However, if a TTP has not been agreed before sanction, this is not necessarily fatal. It is nevertheless important that the plan company is fair and transparent with HMRC from the outset, including ensuring that potential antecedent transactions have been disclosed and that HMRC's position is not purposely disadvantaged.

In *Prezzo [2023] EWHC 1679 (Ch)* the company provided HMRC with extensive financial information to answer and address HMRC's concerns and to assist with its evaluation of the plan. It also offered an additional payment to HMRC between the convening and sanction hearing. Notwithstanding HMRC's continued objections, the court did cram down the plan on HMRC.

> **"At one end of the scale, the plan could offer HMRC what it would receive in the relevant alternative. This would meet the 'no worse off test', but if the outcome under a plan compared to the relevant alternative is marginal this is likely to be challenged"**

Terms of the plan

HMRC does not have priority status under a plan. It is an unsecured creditor in respect of all accrued tax debt. However, recent cases have seemingly elevated HMRC's position above that of other unsecured creditors, with judges noting HMRC's 'special status' given that it is an involuntary creditor. That does not mean that plan companies must pay HMRC's preferential debts in full as a matter of principle but there is, it seems, a scale. And, of course, HMRC is likely to be preferential in the relevant alternative.

At one end of the scale, the plan could offer HMRC what it would receive in the relevant alternative. This would meet the 'no worse off test', but if the outcome under a plan compared to the relevant alternative is marginal this is (as HMRC have done) likely to be challenged. At the other end, the plan could offer to pay HMRC in full, but this may not be financially possible.

Reaching a point somewhere between the two ends of the scale seems fair because it recognises on the one hand that HMRC is an involuntary creditor and is therefore different to other unsecured creditors, but on the other that it does not have priority status (save that companies need to consider whether HMRC should be treated as a critical creditor – see further below).

How do you reach the mid-point such that HMRC will either agree to the plan or the court will sanction cram down?

Paying more

The obvious starting point is to consider whether the plan company can pay or provision for the preferential element of HMRC's claim in full. It is arguably only the preferential part of HMRC's debt that has to be treated differently because it is that debt that has priority status in the relevant alternative.

Although HMRC should not expect to be paid in full, doing so is more likely to gain HMRC's support or secure cram down of the unsecured part of HMRC's debt.

Paying HMRC more than other unsecured creditors (unless they can properly be classed as critical) and/or paying more than HMRC would get in the relevant alternative is likely to assist in securing cram down. This would recognise HMRC's elevated status above other unsecured creditors as has been highlighted in some of the recent cases.

The approach taken in *Prezzo* was to offer HMRC a payment equivalent to what it would receive in the relevant alternative plus an additional £2 million. The additional payment essentially reflected the costs savings before it became uneconomical to proceed with the plan. Looking at the costs saving between a plan and the relevant alternative and offering that to HMRC to ensure it is 'better off' is likely to be persuasive.

Paying the debt over a longer period

Typically, a TTP will be structured over a maximum period of 12 months in the current climate, but there appears to be no obvious reason why a plan cannot structure repayment over a longer period if the company is unable to pay in full immediately. That HMRC must wait for payment does not automatically mean it is being treated unfairly, particularly if other key stakeholders (lenders, bond holders, etc.) are prepared to defer or extend repayment terms. If HMRC is also paid interest, then why would the court not exercise its power to cram down, provided HMRC is otherwise 'no worse off'? This seems to strike a fair balance between HMRC's role as tax collector and the plan company's need to address its financial position. That said, if a company can repay HMRC's preferential debt quicker than it would receive payment in the relevant alternative as part of a plan, that may also be a persuasive factor for cram down.

Fair distribution of the surplus

One of the biggest considerations needs to be how the restructuring surplus (the value created by the plan) will be distributed among creditors and, as part of that, is HMRC receiving a fair share? There is not a one-size-fits-all approach but a plan company should consider the following:

- Who is contributing to the restructuring surplus?
- Are new monies being injected into the plan company?
- Has HMRC contributed to the restructuring surplus because the company has not paid accruing tax debt while the plan is being proposed?

Those contributing to the surplus should receive a benefit from the surplus, but how much should this be? HMRC is an involuntary creditor so has no choice but to continue its relationship with the plan company. HMRC's position can and often does worsen between the convening and sanction hearing and (other than taking enforcement action), it can do nothing to prevent that.

Ensuring that HMRC's position as involuntary creditor is acknowledged by increasing the upside for HMRC in comparison to those creditors who have added no value to the plan or, better still, by restructuring and repaying accruing tax debt as part of the plan, is more likely to convince HMRC to support it.

However, if no provision is made for accruing tax debt, this decision needs to be approached carefully bearing in mind directors' duties. If HMRC's debt accrues while the plan is in progress, directors should consider whether their decision not to pay HMRC while paying other creditors is justified.

The approach is akin to the approach directors should take when making decisions about who to pay when a company is distressed: Are they acting in the interests of all creditors by paying X instead of Y? Although the judge in *Prezzo* did not say that the company had traded at the expense of HMRC and accepted the directors' explanation as to why some creditors and not HMRC were paid – (compromising creditors who provided goods and services to its restaurants would jeopardise the survival of the business) we think that this is an area where plan companies should still tread carefully. Ensuring that the company does not

"In some cases, it might be appropriate to treat HMRC as a critical creditor and pay it in full"

deliberately worsen HMRC's position without proper justification should be high up the agenda. In some cases, it might be appropriate to treat HMRC as a critical creditor and pay it in full. Although HMRC does not have to be treated as a critical creditor in all cases, some plan companies have been criticised for not considering who the critical creditors are.

It also seems that the higher the percentage return to HMRC, the better. For instance, the court refused to cram down one plan which offered a 'tiny' return, but sanctioned *Prezzo* where HMRC received an overall return of above 30%. However, it is dangerous to read too much into this; there is no *de minimis* and each plan will be different.

Balancing other factors such as the size, age and circumstances of HMRC's debt against how the restructuring surplus is distributed will also be relevant. The larger the debt and the bigger the economic stake HMRC has in the business, the more weight the court will give to its views as an 'in-the-money' creditor. If HMRC is treated fairly, and arguably better than other unsecured creditors, the more chance a plan company stands to persuade the court to cram down HMRC debt.

What should a plan not do?

It is clear from recent cases that plan companies should not propose a plan that seeks to eradicate HMRC debt entirely, particularly where other creditors stand to gain. A plan is also likely to be resisted by HMRC if it seeks to tie its hands, whether by forcing it (through the plan) to accept a TTP or preventing it from taking enforcement action post-sanction if the company fails to meet its tax obligations. It should be remembered that HMRC is an involuntary creditor and has a duty to collect tax. Imposing a moratorium on HMRC is unlikely to secure its support or gain approval from the court.

Future plans

For SME companies, the easiest way to 'cram down' HMRC may still be via a pre-pack administration. HMRC cannot have a say in that process and will be paid according to the priorities. Unless HMRC is prepared to 'give and take' under a plan, then it will likely force more companies down the administration route. This is not ideal for rescue, but also not ideal for HMRC who will likely receive much less from an administration.

Jennifer Jones is a senior associate and **Rachael Markham** is a professional support lawyer at Squire Patton Boggs

Adrenaline-charged weekend for stand-by team preparing 'plan B'

Silicon Valley Bank UK was on the cusp of a bank insolvency procedure after the collapse of its US parent. **Mike Pink** explains what the liquidators needed to prepare for

In early March, Silicon Valley Bank (SVB) – a Californian state-chartered bank, the 16th largest bank in the United States and what The New York Times called "one of the most prominent lenders in the world of technology start-ups"– found itself heading for bankruptcy courtesy of a bank run on its deposits as tech investors raced to withdraw their deposits.

The run was triggered, or at least fuelled by, social media reports that the bank was exposed to huge mark-to-market losses on US Treasury bonds it had invested depositors' cash in. The bank had a huge influx of deposits during the Covid-19 pandemic, which it had yet to deploy. The almost-global increase in interest rates by central banks trying to stem inflation has inevitably made fixed-term, fixed-rate Treasury and other government agency bonds less valuable on a mark-to-market basis.

> **Management did their best to inject confidence in their customer and depositor base, emphasising the strength and independence of the UK bank's balance sheet (it had over £1 billion of equity), but on that Friday alone its balance sheet shrank by almost a third with £2.9 billion of withdrawals**

While institutions holding such investments aren't required to report unrealised losses where they were intended to be held to maturity (and thus would be settled at par by the issuer), SVB found it needed to sell some bonds early to meet depositor withdrawals (ironically due to the depositors' own liquidity needs), which crystalised billions of dollars in losses. Analysts picked up on SVB's large mark-to-market exposure after its 2022 results were published on 24 February 2023. By 8-9 March, social media carried stories about the vulnerability of SVB – and the risk to the deposits therein. Over the next few days attempts were made to withdraw approximately US $42 billion in cash, creating the liquidity crisis that forced the regulator, the California Department of Financial Protection and Innovation to place SVB under the receivership of the Federal Deposit Insurance Corporation (FDIC) on Friday 10 March.

> **As it did not hold client assets, SVB UK could not benefit from the hybrid 'special administration (bank insolvency)' regulations**

In the UK, SVB operated a subsidiary bank, Silicon Valley Bank UK, which had been operated simply as a branch of the US parent until July 2022. Its regulation in the UK was the responsibility of the Prudential Regulation Authority and the Financial Conduct Authority (FCA), and any resolution was the responsibility of the Bank of England (BoE), as resolution authority.

Contingency plans

SVB UK was not immune from the depositor run. Management did their best to inject confidence in their customer and depositor base, emphasising the strength and independence of the UK bank's balance sheet (it had over £1 billion of equity), but on that Friday alone its balance sheet shrank by almost a third with £2.9 billion of withdrawals.

While, appropriately, the primary efforts of SVB UK's management and the UK regulators was on finding a way to rescue the bank – contingency plans had to be developed should those rescue attempts prove unsuccessful. PRA-regulated banks are required to prepare recovery plans and resolution packs – the latter are aimed at supporting resolution planning by the BoE. Each bank's resolution plan is set according to indicative thresholds as set out in the BoE's approach to resolution publication (the *Purple Book*):

- Bail-in is reserved for large banks, with a balance sheet of typically greater than £15 billion. This includes all the UK-registered globally or domestically systemically important banks (G-SIBs or D-SIBs) and a few medium-sized banks.
- Transfers (including good-bank/bad-bank splits, where the 'good' assets/liabilities are moved to a new entity, leaving the problem ones behind) are to be used where possible for medium-sized banks with more than 40,000 transactional accounts.
- For all others, the default is liquidation. That is, banks are to be allowed to fail, potentially using a number of modified insolvency procedures, which the BoE can apply to court for.

Banks and other institutions that hold client assets under the FCA's client assets sourcebook rules may be placed into a hybrid procedure under the Investment Bank Special Administration Regulations 2011.

SVB UK was no different; its resolution plan was to use the bank insolvency procedure

> **High on the list of priorities for day one of a bank insolvency must be establishing control over IT and data integrity… For SVB UK, this was going to be challenging, as the principal IT platform that SVB UK used was owned and controlled by the bank's parent and some affiliates**

SVB UK's head office in Finsbury Square, London

(BIP), a form of liquidation. As it did not hold client assets, it could not benefit from the hybrid 'special administration (bank insolvency)' regulations. Thus, Interpath was tasked with preparing for the possibility of a BIP sometime over that weekend.

Command-and-control structure

Planning for a BIP is not so different to planning for any large insolvency, although the contingency planning requires engaging with the authorities, who are decision makers in making the application for insolvency. The key is ensuring you have identified all of the classes of assets, liabilities and contingent assets and liabilities, plus establishing how the institution functions – what the command-and-control structure is; what departments there are and what they do; and who does what. Once that's mapped out, you can begin to allocate roles and responsibilities to the 'liquidator-in-waiting' team. It's critically important too, to have a well-resourced project management office to support the proposed appointment-takers and the wider team, managing communication and data sharing.

Thankfully, with the bank's resolution pack only being a few months old (becoming a subsidiary in 2022), we had a ready source of key information about the bank's operations. This enabled us to assimilate most of the key features of the bank and issues we were likely to, or could possibly, face.

High on the list of priorities for day one of a bank insolvency must be establishing control over IT and data integrity, including passwords, cyber security, cut-off and back-ups. For SVB UK, this was going to be challenging, as the principal IT platform that SVB UK used was owned and controlled by the bank's parent and some affiliates. The standard way of sorting this is to negotiate a temporary service agreement, or transitional services agreement, with the service-provider. The uncertainty here was who would be in control of that platform on the Monday, and thereafter? As of the weekend it was in the hands of the FDIC receiver, but who could know whether their own resolution actions might see the US operations and the platform sold to a third party – one that might have little interest or incentive to assist us in the UK?

Physically and emotionally exhausted

Equally, during the inevitably very short planning phase, the senior management and the wider staff of the bank are critical, both in imparting the information we needed to develop our plans, and in carrying out the key functions of the bank that would inevitably be required post-liquidation. By the weekend the senior team were physically and emotionally exhausted. Moreover, they were (rightly) prioritising rescue and the due diligence requirements of interested parties over the need we had to prepare for 'plan B'. Empathy and patience were key to building a relationship with this team and avoiding conflict or stress.

Objective one of a BIP liquidator is to assist the Financial Services Compensation Scheme in dealing with eligible depositors.

> **"There were over £1 billion of in-flight transactions that had been caught up over the weekend. Without that, the FSCS faced a huge risk of paying the wrong people or the wrong amounts with an out-of-date SCV file"**

In this case that meant planning to undertake a full reconciliation of the bank's single customer view (SCV) files immediately post-appointment as there were over £1 billion of in-flight transactions that had been caught up over the weekend. Without that, the FSCS faced a huge risk of paying the wrong people or the wrong amounts with an out-of-date SCV file.

'Go/no-go' decision points

By Sunday evening our plans were at an advanced stage. But, this was only ever 'plan B'. Over that weekend, management and the authorities had been running multiple, parallel, negotiations with interested parties who may have been able to rescue the bank. A number of 'go/no-go' decision points had been set for Sunday evening and night to take stock of where those negotiations were going and whether 'plan B' would unavoidably become 'plan A'. At around 10pm on Sunday, we were informed that the next decision-point would be around 5-6am on Monday – an opportunity for the team to get some much-needed rest, just in case.

On Monday morning it was announced that HSBC had acquired SVB UK's share capital for £1, which had been effected by a share transfer instrument made by the BoE. A great result for the depositors, management, the authorities and HSBC.

Our team was stood down; and reflected on an adrenaline-fuelled, highly charged weekend.

Mike Pink is managing director at Interpath Advisory

IPs and insolvency lawyers well placed to help avoid disaster

The sooner management teams start planning for the worst, the greater their chance of steering successfully through the crisis, say **Stuart Alford** and **Howard Morris**

The willingness of venture capital to invest large amounts based on an assessment of what might be rather than what is (to take a chance in other words, albeit one that is carefully calculated), is what has powered the tech industry to become an engine of wealth production and progress.

Venture capital investment in tech peaked in 2021 at $347 billion. But over the last 18 months valuations have fallen, the cost of money is no longer cheap, and other sectors can offer a shorter path to revenue and exit. At the same time inflation is driving up costs. So far this year, VC investment in tech has dropped significantly to $80 billion. AI is still, unsurprisingly, continuing to be a bright spot for investors. Many tech start-ups through to later stage growth companies are facing their first financing crunch as they consume the remains of their 2021 equity raises and must compete in a challenging market for further investment.

So, shall we see a wave of restructurings in the tech industry? Is restructuring even possible for companies that have little or no debt and revenue? What are the views of the VC investors?

Intense competition

Of course, plenty of tech companies, both start-ups and more mature companies, have failed over the last decade during the boom in tech investment. Their technology has not worked, could not be developed as envisaged, was overtaken by the ideas and technology of competitors, or did not resonate in the markets they expected. And, notwithstanding the eye-watering amounts of capital deployed, there has still been intense competition for every dollar or pound of VC cash. In those cases, there has not been much to do for the restructuring and insolvency profession. The good staff often leave to go to competitors and the technology itself may have very little value as an isolated asset.

But now we are in a different place. This is going to make for challenging times for portfolio companies, placing an emphasis on prudent financial management and revenue generation. Having said that, opportunities still remain. Talent does not disappear overnight, compensation levels may settle, and capital is still out there; corporate venture capital might be best primed to step in and look for opportunities to build for the long term at more favourable valuations.

> **“There has been a growing market for debt in the tech sector, so often there is debt to restructure. And remember that many conventional restructurings require new money”**

But let us return to the question of whether a restructuring of a tech company is even possible. The usual company restructuring turns on reducing debt or the burden of debt, converting it to equity or payment in kind, thus allowing more of the debtor's revenue to be freed from debt service. The obvious problem is that tech start-ups and even later stage growth companies have not taken on debt (or not much) and are not yet generating significant revenue. This is in fact less the case than often thought. There has been a growing market for debt in the tech sector, so often there is debt to restructure. And remember that many conventional restructurings require new money; a debt for equity conversion or postponing repayment will not necessarily be enough to achieve a rescue.

New equity

An equity-driven restructuring (as opposed to a debt-driven one) is possible because the economic outcome for the debtor and its investors may not be very different from the conversion of debt to equity plus a new money injection. The valuation of assets may have fallen and so a new equity raise may be at a significant discount, or “down round”. The existing equity investors who may have contributed to successive subscriptions will likely baulk at the idea of the company borrowing from a new source and granting security and thus relegating the equity investors to an inferior position, so they may be willing to put in new equity or take on the role of debt providers.

This will hinge on whether investors have the appetite to pivot and structure debt/bridging solutions that give them favourable terms while meeting the immediate financing needs of their portfolio companies.

We must not underestimate the adaptability of the VC and tech eco system. Concentrated in this industry are some of the very best creative, and intensely commercial, minds. Market participants have a history of adapting, with savvy investors coming out of the woodwork to seek opportunities. Those with a specialism or appetite for special situations are always on the look-out, and well capitalised corporates always have an eye to add-ons or cherry-picking intellectual property. While we have seen some examples of this over the last 12 months, the floodgates are yet to open. Nevertheless – and it's hard to predict – H2 2023 may well see a significant uptick in this kind of activity.

We have seen a lot of tech financial crises over the last 18 months. IPs and, of course, specialist lawyers are uniquely placed to help companies avoid disaster. Boards and management need to focus on costs and cash management and to look at how plans for development and growth might be adjusted. They need to bring in people with skills in these areas that have not been nearly so important in the past. The passion and belief of founders and inventors need to be supported by rigorous financial analyses and, as we well know, the sooner management teams turn to plan for the worst the more choices they will have and the greater their chance of steering successfully through the crisis.

Stuart Alford is partner in the corporate group, and **Howard Morris** is head of the business and restructuring and insolvency group, London, at Morrison Foerster

Adhering to standards builds credibility and client trust

IPs should not only ensure their own advertising is compliant, but also flag other concerning advertising content to the media platform and their RPB, says **David Holland**

In insolvency, where financial distress and uncertainty abound, maintaining trust and credibility is of paramount importance. One crucial aspect that underpins this trust is the adherence of insolvency practitioners (IPs) and their firms to the published advertising guidance from regulators and from the Committee of Advertising Practice (CAP), which writes the advertising rules, and the Advertising Standards Agency (ASA) that enforces them. Such adherence not only fosters transparency and consumer confidence but is also an important starting point in ensuring that the insolvency sector operates with integrity and professionalism.

Regulatory objectives in insolvency

The role of IPs in personal and corporate insolvency is a challenging professional role. IPs have to help individuals and businesses navigate financial troubles and also maximise returns for creditors while ensuring fair treatment for all parties involved. Recognised professional bodies (RPBs) set stringent standards to achieve these objectives and maintain the integrity of the profession.

One of the primary statutory regulatory objectives is to protect and promote the public interest. IPs adhering to advertising guidelines helps to create a positive image for the entire sector which in turn helps to achieve the public interest test.

By being transparent and honest in their promotional efforts, IPs can gain the trust of creditors, debtors, and the wider public. Recent media coverage about social media advertising for IVAs and PTDs has shown how this trust can be easily undermined.

Additionally, RPBs aim to encourage an independent and competitive IP profession. Ensuring compliance with advertising guidelines helps prevent misleading or false claims that could distort that competitive landscape.

Parallels between personal and corporate insolvency

While the personal and corporate insolvency sectors serve different client bases, advertising concerns raised in the personal insolvency sector are now being mirrored in the corporate sector. One of the key issues common to both is the vulnerability of individuals or directors of companies facing financial distress. Misleading or deceptive advertising can seek to take advantage of this vulnerability for commercial gain, leading to potentially harmful outcomes.

In personal insolvency, individuals may already be in a vulnerable state, grappling with overwhelming debt and seeking a lifeline to regain control of their finances. Misleading advertising in this sector is a significant risk, which is why all the RPBs who regulate IPs worked with the ASA and CAP to consolidate the various judgements and promote the Enforcement Notice in June 2022[1]. The

Insolvency Code of Ethics has defined sections on 'Agencies and Referrals' and 'Advertising, Marketing and other Promotional Activities[2]' and the SIP 3.1 changes effective from the 1 March 2023 have meant there has been some improvement in advertising content.

Similarly, in the corporate sector, businesses facing insolvency may be desperate to find a solution. Misleading advertising in this context can attract struggling companies into unsuitable agreements and can lead to misconceptions about the complex duties and functions of IPs.

The importance of advertising compliance

Adhering to the published guidance from RPBs and advertising authorities is crucial for IPs and their firms to maintain the trust of their clients and stakeholders. Non-compliance can have serious consequences, including damage to reputation, regulatory sanctions, and potential legal action. Moreover, failure to comply with advertising guidelines undermines the very objectives of the insolvency profession, which are rooted in transparency, fairness, and ethical conduct.

> "Such compliance ensures transparency, protects vulnerable individuals and businesses and ensures fair competition among IPs"

To ensure compliance, IPs should be well-versed with the guidance provided by relevant RPBs and ASA/CAP. These guidelines cover various aspects of advertising, including truthfulness, substantiation of claims, and responsible marketing. Furthermore, IPs should also be aware of any updates or changes to these guidelines and be able to evidence that they have reviewed all the advertising materials that could lead to an insolvency appointment. This should be done regularly to ensure ongoing compliance, and this will include evidencing reviews of third party content and having control over any agreements in place.

Best practices for compliant advertising

To meet the requirements of RPBs and advertising authorities, IPs should consider the following best practices:

1. **Transparency and honesty:** All advertising materials should be clear, accurate and not misleading. IPs must avoid making exaggerated claims or promises they cannot deliver.
2. **Substantiation of claims:** Any claims made in advertising should be supported by verifiable evidence. IPs should be prepared to provide evidence to back up their statements.
3. **Avoiding jargon:** The use of complicated or technical jargon should be minimised to ensure that the message is accessible and understandable to the target audience. But the messages should be clear about the services being offered, the costs and potential outcomes.
4. **Compliance with provision of services regulations:** IPs should ensure that their websites and advertising materials include the necessary information required by the Provision of Services Regulations[3]. This information typically includes details about the IP's qualifications, regulatory status, company name, number and address, and fee structures.

By following these best practices, the ASA rulings[1] and Insolvency Service Guidance[4], IPs can create advertising materials that not only meet regulatory requirements but also build trust and confidence among their clients and stakeholders.

Adhering to the published guidance from RPBs and ASA/CAP on advertising is not merely an obligation for IPs. It is a fundamental aspect of maintaining the integrity and professionalism of the insolvency sector. Such compliance ensures transparency, protects vulnerable individuals and businesses and ensures fair competition among IPs. By upholding the highest standards in advertising, IPs can contribute to the reputation and credibility of the entire profession, fostering trust with clients and stakeholders alike. To help maintain standards, it is important that the whole profession take a stance to ensure not only their own advertising coverage is compliant, but they should be flagging up all concerning content with the platform provider and notifying the relevant RPB with evidence.

CAP guidance on advertisements targeted at consumers

Social media/search/display advertising (on/offline) advertisements must not state or imply:

- Association with – or approval from – Government, debt charities or regulated advisory bodies.
- Eligibility is guaranteed or that eligibility checks are quick or straightforward. Ads that exaggerate the speed of the IVA/PTD process, or imply that anyone can resolve their debt, irresponsibly trivialise an IVA/PTD application and mislead
- The service or advice is "free" (e.g. "Free advice" or "Free service").
- The IVA/PTD service is particularly relevant for a particular targeted demographic or especially tailored to an individual's personal circumstances. (e.g. "Important message for women in their 40s").
- Reference to bankruptcy e.g. "Bankruptcy assessment" or "Avoid bankruptcy today". Ads for IVA/PTD services should not imply that the advertiser is qualified to make an assessment of whether bankruptcy could be a suitable and appropriate option for enquirers. This includes references to getting debt free in 12 months.
- That customers can "Lower your debt today" or similar.
- That customers "Can write off up to 85% of their debts" or similar in the absence of robust documentary evidence.
- Use any ratings, reviews or testimonials in the ad which are not provably genuine. Marketers must hold documentary evidence that a testimonial or endorsement used in a marketing communication is genuine.

Source: Committee of Advertising Practice

1 Enforcement Notice - Debt management ads by insolvency practitioners and lead generators - ASA | CAP
2 Insolvency practitioner code of ethics - GOV.UK (www.gov.uk) Sections 330 & 360
3 Complying with Provision of Services Regulations for businesses and Competent Authorities - GOV.UK (www.gov.uk)
4 Guidance on monitoring insolvency practitioners: Advertisements, marketing and debt advice - GOV.UK (www.gov.uk)

David Holland is chief inspector at the Insolvency Practitioners Association (IPA)

Insolvent firms must act early to weather social media storm

Strategy, systems and training can help turn the tide for a business and its brand when negative information spreads online, says **Steve Dunne**

If you are appointed as an office-holder over a business that is on the cusp of a social media storm, would you know what that meant? Would you have a feel for the possible ramifications it might bring to a situation? More importantly, would you know how to deal with it?

> **"No matter how professional and thorough an approach an IP has in an insolvency scenario, where the situation contains the potential for a social media storm the whole thing can run out of control very quickly indeed"**

Perhaps the most significant change to business life in recent times, across any market sector, has been the speed at which a piece of bad news or a negative market development can spread across the globe.

That negative information, moving at frightening speed, may just be misinformed. Alternatively, it might be uninformed or based on an unsubstantiated rumour; and then again the news might be ill informed, with keyboard warriors and trolls putting heat under a story that, 20 years ago, would have spread slowly by word of mouth and malicious gossip, often petering out before serious damage was done.

Inaccuracies

There are two things that social media, and the internet generally, have brought into the mix around insolvency, recovery and risk.

Firstly, there is fast amplification. The collapse of Silicon Valley Bank earlier this year – the second-largest bank failure in US history – was brought about by many factors, including large numbers of uninsured deposits, a large proportion of deposits invested in hold-to-maturity securities and rising interest rates, but it was the speed of its demise, in just a couple of days, that caught everyone out. And that speed was brought about by a Twitter storm. Twitter had amplified rumour and gossip, extended its reach exponentially and, as is the nature of a Twitter storm, achieved it all in breathtaking time.

Secondly, there is connectivity. Social media allows people, who in years gone by may have sat in the corner of their village pub espousing their conspiracy theories to nobody in particular, to connect with each other and form movements, creating tidal waves of misinformation, inaccuracies and panic – each resulting post of which will corroborate another regardless of truth.

What we have also seen around this phenomena is that the rising hysteria of rumour and counter-rumour is accelerated by the online world of individuals' commentary feeding the main stream media, which then feeds back into the online world, but now with increased credibility as trusted sources are taken out of context.

The introduction of hashtags into posts quickly acts as a rallying point and aids something social media experts call 'findability', allowing all and sundry to discover the feeds and then to get involved in the conversation, adding to the general momentum.

This applies across all social media platforms including Twitter, Linkedin, Instagram, Tiktok, Facebook and blogs, as well as lesser-known platforms.

Out of control

Findability and negative information is a challenging scenario that means that no matter how professional and thorough an approach an IP has in an insolvency scenario, where the situation contains the potential for a social media storm the whole thing can run out of control very quickly indeed.

So, what can be done and what should be put in place to manage this issue?

Well, like most things in successful business operations, it boils down to three elements – strategy, systems and training.

Firstly, strategy. We cannot hope to stop the flow of misinformation and rumour swirling around social media. That would be a fool's errand. What we can do is spot it, match it and correct it quickly.

> **"Remember that people are more likely to share videos and infographics than plain text – and this is a great way to explain complex issues within the tight attention span of most internet users"**

Fortunately, 'findability' works both ways. Yes, it allows the protagonists and trolls to find each other, but it also allows us to find them. Being aware of the hashtags being used around an event and using them in your posts should be a cornerstone of your strategy.

Watching what subjects are trending on various platforms and getting out correctional posts into those streams becomes important also.

Where possible you need to open communication channels and communicate as regularly as possible, even if it is just to repeat a previous post (the life of an average Twitter post can be very short). Create a 'pull in, push on' strategy where all your posts include a link that takes the reader to a 'virtual press office' (VPO), which holds all the official statements and updates around the issue. This strategy uses the posts on all platforms a bit like a fishing trawler, getting close to the fish through hashtags and then placing bait in terms of a link to definitive information to direct the flow of traffic.

> **"Many brands fail in the social media space due to a lack of knowledge about social mores and culture on the internet"**

The VPO is a special website or microsite that is used just for this particular situation. Content here can then be used by bloggers, vloggers and social media participants in their own posts to ensure that your message gains exposure.

If you have sufficient budget available, a sponsored link on Google is worth considering so that your content sits at the top of the search returns. We know that internet users press on links readily and they do not care if those links are sponsored or organic. The lower your content on the search engine return, the fewer people will see it, so being top of the Google page is a good strategic move.

Other tactics should also be considered as part of the strategy. A video uploaded to Youtube will also aid 'findability' as Youtube is still the second largest search engine after Google.

Finally, on content for your strategy, remember that people are more likely to share videos and infographics than plain text – and this is a great way to explain complex issues within the tight attention span of most internet users.

The second element of your approach should be systems. Using listening tools is vital. The internet presents many providers of listening services and they do not necessarily cost much. Many open source systems exist and offer both comprehensive premium and freemium services. Look at providers like Sprout Social, Mention and Brand24.

A good social media management system, such as Buffer or Hootsuite, will enable you to time your posts in advance to launch on a variety of social media platforms at the same time, freeing your team up to do other activities.

Lack of knowledge

The third element is knowledge and training. The world of social media is ever evolving with new platforms, techniques and tools coming on stream all the time. So having a team fully up to speed on current techniques is vital. It is not just the technology that the team need a knowledge of though. Many brands fail in the social media space due to a lack of knowledge about social mores and culture on the internet.

> **"Preparation is key, and central to that is building up a knowledge of which internet influencers are relevant to the field in which the company operates. Influencers, as their name implies, can make a huge difference positively or negatively to the situation"**

Finally, you need to prepare for the impact of the internet and social media on a company as early as possible, not when it becomes an issue.

Preparation is key, and central to that is building up a knowledge of which internet influencers are relevant to the field in which the company operates. Influencers, as their name implies, can make a huge difference positively or negatively to the situation.

A social media storm can be hugely damaging to a situation or brand under normal circumstances but can be doubly so in an insolvency situation where money and time are limited. But it doesn't have to be that way.

Steve Dunne is chief executive of Digital Drums

Structural shift needed to make RPs more cost-effective

Tibor Barna outlines how he believes two new approaches, together with some practical tips, should make restructuring plans more viable for SMEs

The recent SME Part 26A restructuring plans that have concluded through the courts in the past few months, both successfully and unsuccessfully, send a key signal that this relatively new area of insolvency law is receiving increased interest.

Even if this is at a relatively timid pace, the consensus from a recent panel at the R3 Contentious Insolvency and Creditors Forum is that this instrument is here to stay within the SME space. The limits of the procedure are gradually crystalising as various approaches are tested in the courts, creating a critical mass of case law that yields reasonable certainty around the core elements of restructuring plans.

Given the above, I am sharing a few practical tips and perspectives on the topic, to further boost the confidence of the R3 readership to engage with this new tool as part of advising and supporting their clients. The points will be focused on demystifying complexity and making the instrument more cost-effective and thus accessible for the SME space.

More commercial pie – in smaller pieces

The commercial aspect of fees is an obvious one. I propose that a structural shift is needed to make this tool more accessible in the SME space. Large cases that generate lots of billable hours will be hard to come by in the cases of SMEs and even if the cases require a certain volume of work, the assets and size of the companies will struggle to sustain the costs.

> **"As the power of the cram down has been credibly demonstrated in the cases to date, it becomes the stick, while the money saved from not having to push a fully-fledged and evidenced plan through the courts becomes the carrot"**

As the hourly rates are unlikely to see substantial discounts, the time spent per case and the overall cost needs to come down. If this is achieved, the size of pie, or the number of SME cases, will increase, creating more work overall, even if in smaller pieces. This will help capture value by rescuing companies as going concerns instead of allowing them to collapse into pre-pack fire sales or liquidations that inherently are value destroying. This value surplus that is retained in the companies can then support the overall costs of achieving the rescue.

> **"The necessity of involving IPs and solicitors is certainly not going away, but by adapting the involvement, a win-win situation can be created where there is more work to go around"**

So how do we get there? Below is a combination of two approaches that in tandem should go a long way to achieving the above.

Carrot and stick negotiation

We see Part 26A plans being used mostly as a silent instrument, one that in most cases never gets to a court filing, yet still achieves the intended outcome to rescue the SME. This means that a substantial part of the detailed court preparation such as detailed financial assessment from IPs or witness evidence from solicitors is not needed.

What is needed instead is the clear structure and terms of a proposed plan, reviewed for legal suitability in reference to case law by solicitors, and for the appropriate relevant alternative comparator by IPs. This validated skeleton plan then becomes a credible negotiating tool with dissenting creditors along the lines of: "It's going to cost us X to get this through the courts with a high probability of success. You will get Y in that case. If it fails, you get even less in liquation or asset sale. We can give you Y plus a proportion of X if you agree to voluntarily restructure."

> **"The simplest way to avoid having a plan opposed and sunk by HMRC is to treat HMRC as a critical creditor as would be morally appropriate"**

As the power of the cram down has been credibly demonstrated in the cases to date, it becomes the stick, while the money saved from not having to push a fully-fledged and evidenced plan through the courts becomes the carrot.

Offloading work

The second approach is to reduce cost by offloading some of the preparation work from IPs and solicitors to lower cost resources.

One option is to empower the representatives of the company to take on some of the work. To help with reducing the knowledge gap, certain solicitors and advisers from various firms (for disclosure ours included) are working on publishing freely available self-help practical guidance for the Part 26A process.

This can be complemented by lower cost boutique advisory firms, directly or via subcontracting, as well as staff trained inside existing firms and billed at lower grades.

The necessity of involving IPs and solicitors is certainly not going away, but by adapting the involvement, a win-win situation can be created where there is more work to

> **Being a little bit more generous on valuations and on how the surplus is distributed goes a long way in swaying both the court as well as creditors who may otherwise oppose, which overall will reduce costs, risks, and headache**

go around as the Part 26A cost barrier to entry is lowered for SMEs, and companies get a more cost-effective result overall.

Practical tips

In addition to the carrot and stick negotiation and offloading work approaches above, below we list some practical tips from our hands on experience and observation to help boost confidence around approaching Part 26A plans.

Treatment of HMRC

HMRC has woken up to the new reality of Part 26A and has been pushing back forcefully against what they consider opportunistic expropriations of the taxpayer. The simplest way to avoid having a plan opposed and sunk by HMRC is to treat HMRC as a critical creditor as would be morally appropriate. Nonetheless HMRC have confirmed at the previously mentioned R3 event where they appeared that they are not opposed to compromises that are fair and reasonable.

Our position is that if the pence-in-the-pound ratio of compromise applied to HMRC is the same as applied to other creditors, HMRC will have a difficult time to argue lack of fairness. Further, as HMRC has its time-to-pay scheme, another form of reasonable compromise would be to stretch the boundaries of TTP in the compromise terms of the plan for a longer payback, but a payback in full, perhaps with interest.

HMRC has confirmed it is working on public guidance for acceptable compromise terms, but that may take some time to materialise. Until then, the above should help guide successful outcomes when it comes to HMRC.

Valuations and relevant alternatives

The key point of likely challenge to a plan is who is in the money and who is out. This hinges on the valuation and relevant alternative presented. In our experience the more aggressively pessimistic a valuation is the more likely it is to get challenged. Challenges, even if defeated, will drive delay and costs.

The backers of a plan may see opportunity to maximise the surplus of the plan they intend to keep but this should be carefully weighed up, and advised on, against the costs to be incurred and the risk of defeat of the plan which will drive further consequential legal costs.

Our experience shows that being a little bit more generous on valuations and on how the surplus is distributed goes a long way in swaying both the court as well as creditors who may otherwise oppose, which overall will reduce costs, risks, and headache.

'The size of the commercial pie will increase, creating more work overall'

A plan is not a guarantee

We observed a pattern for both solicitors and IPs willing to support only such plans that are seen to somehow guarantee the rescue of the company in question. This introduces unhelpful agonisation and delays over third party aspects that cannot be controlled. Regulators may pull licences after a restructuring, key suppliers may walk away, future projected funding tranches may not materialise, revenues may not recover. The delays and costs from trying to get impossible assurances may scupper the company before the plan process can reach its conclusion.

The bare minimum that a plan must achieve is to mitigate the current immediate financial difficulty to allow the company a reasonable chance of avoiding collapse in the near future as long as the compromised parties are no worse off than in the relevant alternative. If the in-the-money creditors want to support a plan of a company that may still end up in administration later, the company should be supported in the process to allow creditors to have their way.

I hope readers find the perspectives I have summarised helpful and can put them to good use to support the rescue of SMEs using Part 26A. I am open to discuss any of the above points or other Part 26A topics with any interested reader.

The author represented the proposing creditor for the Good Box restructuring plan and advised the opposing creditors in the Nasymth restructuring plan.

Tibor Barna is a founding partner of Capital Agents

Finance scam victims need more help from IPs and regulators

Misfeasant directors of regulated companies know most IPs expect only the regulator will hold them accountable, which is a green light to act dishonestly, says **Peter O'Donnell**

The Financial Conduct Authority defines a vulnerable customer as "someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care".

> When assisting with the administration of a failed regulated firm IPs, law firms and specialist financial advisory firms approved by the IPs should do what they can to help these victims

'Not acting with appropriate care' is also a euphemism for dishonest advice. Therefore individuals who have already lost money due to an investment scam, pension mis-selling or inappropriate investment advice are vulnerable.

It is disappointing yet unsurprising that an offshoot industry has developed from such advice, which targets these people for another hit. The original fraudsters set up these additional scams because they got away with it the first time and have access to the client records to contact the victims again.

Inappropriate advice

Many of these victims have lost a considerable proportion of their life savings. This can include their pension schemes, which became a soft target for inappropriate advice and investments due to changes in legislation, such as the pensions freedoms introduced in 2015, that presented opportunities for the greedy and those lacking in moral integrity because it was so profitable. They knew the regulator would not be able to hold them responsible.

> As the regulated firms became technically insolvent, the directors asked IPs to accept appointments to put them into administration. Unfortunately most of the clients of these failed firms then had considerable investment losses of which they were unaware

Unfortunately many of those who suffer a loss due to an investment or pension scam become 'recidivist victims', in other words they lapse into previous undesirable patterns of behaviour.

Certain traits of human nature drive this. Firstly, we can be slow to learn from our mistakes. Secondly, many of these people are financially naive. They are inclined to think the best of people. Finally, they can be desperate to recover their money. Although the individual is focused mainly on the loss, desperation can be fuelled by embarrassment, low esteem and a sense of failure, particularly if the monies lost will have a detrimental effect on others such as close family members.

“The former advisers or directors of the failed operator generally initiate these scams and convince the scheme members of their supposed good intentions”

We have recently seen a trend of scammers targeting the clients of failed FCA-regulated firms and failed self invested personal pension (SIPP) operators and small self-administered scheme (SSAS) operators regulated by The Pensions Regulator.

Impossible contingent liabilities

The recent failures of Hartley Pensions and Rowanmoor Personal Pensions has put tens of thousands of vulnerable pension scheme members at the mercy of these scammers. The same circumstance occurred with the failure of Berkeley Burke SIPP Administration, Greyfriars, Lifetime SIPP Company and GPC SIPP.

Most of these operators failed due to exposure to 'non-standard assets', in other words investments that pension administration companies have a duty of care to prevent. Successful complaints to the Financial Ombudsman led to impossible contingent liabilities for the pension administration companies. As the regulated firms became technically insolvent, the directors asked IPs to accept appointments to put them into administration. Unfortunately most of the clients of these failed firms then had considerable investment losses of which they were unaware, as well as an ongoing burden of annual SIPP or SSAS fees that they could not ignore. They were paying fees for pension investments that did not exist and many of the clients felt abandoned by the very industry regulators who are supposed to be there to protect them.

Asset recovery scam

We recently received evidence of fraudulent letters being sent to scheme members informing them that monies due to them have been recovered and placed in an escrow account, which asks for a fee for the release of the funds. The letters targeted unwitting investors in a billion-Euro property investment failure known as Dolphin Trust Investment, also known as Dolphin or the German Property Group. Many financial advisers recommended this for pension schemes as they were paid up to 30% of the value of the funds transferred. This deception is just one example of an 'asset recovery scam' or 'advance fee fraud'. These advance fee frauds follow the same pattern. If you send an upfront fee, the scammers will release the funds.

The former advisers or directors of the failed operator generally initiate these scams and convince the scheme members of their supposed good intentions using both detailed knowledge and data of the member themselves, as well as about the distressed or failed investment. The letters come on appropriately headed paper with full client details and look legitimate and convincing.

Mass marketing

Many in the financial services industry do their best to highlight this problem via alerts and information on the regulator's website. But, as we know, the scammers play a numbers game, mass marketing to their victims.What is known is that many of these failed investments operate outside of the UK, and client information and data get passed on with impunity. Regulators will not, or do not have the resources to, investigate and identify those who operate the investments in conjunction with UK introducers and independent financial advisers.

It is the duty of all those involved with these clients to try and protect them from these people and, in many cases, protect them from themselves.

First and foremost, the regulators should be more proactive, as they act only in a reactive manner to the actions of the fraudsters. There is overwhelming evidence that the FCA received warnings of several of these investment scams – the mis-selling of pensions and inappropriate pension transfers that cover up the initial mis-selling into fraudulent schemes – but chose to ignore them in the knowledge and comfort that the Financial Services Compensation Scheme (FSCS) would, in the majority of cases, pay out.

However, as we have seen recently, making complaints to the Financial Services Compensation Scheme for compensation is not something that most victims understand.

“It appears that vulnerable members of the public will continue to get scammed until regulators make a much more serious attempt to protect them”

In many cases, the FSCS may not be accessible for them due to the nature of the fraud, as in the case of London Capital and Finance, where many people invested using what was misrepresented as regulated advice due to very slick marketing. In addition, many people may have lost monies well above the maximum payouts from the FSCS.

When assisting with the administration of a failed regulated firm IPs, law firms and specialist financial advisory firms approved by the IPs should do what they can to help these victims.

Independent financial advisers are lightly regulated and know nothing will change to protect the innocent. Misfeasant directors of regulated companies know that most IPs expect only the regulator to hold them accountable, which is a green light to continue to act dishonestly.

It appears that vulnerable members of the public will continue to get scammed until regulators make a much more serious attempt to protect them.

Peter O'Donnell is director and owner of New South Law

PPF-protected pensions unlikely to be compromised by plans

Restructuring plans work for the employer, but a cram down of defined benefit scheme debt appears contrary to Parliament's intentions, argues **Malcolm Weir**

Restructuring plans (RPs) have been available for three years and yet, despite the flexibility and certainty they can offer, they have been used on relatively few occasions. Several reasons may explain this, such as potential complexity and cost, but it may also be because creditors realise that they will be crammed down and would rather agree to a better consensual informal restructuring.

> **It is difficult to see how a theoretical debt that is not recorded on the balance sheet of an employer (the s75 debt) can be compromised without failing the court's test of a party being 'no worse off' under an RP**

So far, the plans that have been approved have not directly affected a defined benefit (DB) pension scheme. Those plans with a DB scheme involved have seen the scheme's position maintained or arguably enhanced by the improved covenant the employer has to offer.

A question that remains to be answered is whether an employer can use an RP to compromise amounts due to a DB pension scheme. There are a couple of situations where it is conceivable. If the RP is used to exit an administration, there is no reason why the s75 debt (the employer's obligation to pay for underfunded DB schemes or delayed payments into the scheme) that will have crystallised on insolvency cannot be compromised along with other debts due. Equally, an amount due to a scheme from a third-party guarantor could be compromised.

The legal view is that a contingent debt can be compromised by an RP. However, in the world of pensions, exactly what debt or deficit is being compromised? There are a number of different types of deficit depending on what purpose they are being used for. These include the technical provision deficit for a continuing scheme, the s179 deficit estimating the financial call on the PPF in insolvency and the s75 full buy out deficit. None of these appear on the employer's balance sheet where the number included is typically the IAS19 defined accounting deficit.

It is therefore more difficult to see how a theoretical debt not recorded on the balance sheet of an employer (the s75 debt) can be compromised without failing the court's test of a party being 'no worse off' under an RP.

Invidious position

It might be possible to amend the schedule of deficit reduction contributions but, for the purposes of this article, the focus will be on limiting or eliminating the s75 deficit for the employer. This would put trustees in an invidious position. The s75 debt arises through promises made to members of the scheme, which is a separate legal entity to the employer and which the RP cannot change. If the RP eliminates the employer's responsibility for the debt, in all likelihood the scheme will not be able to meet its liabilities and will become insolvent. The trustees would have little alternative but to wind up the scheme and trigger the s75 debt, making it a payable, rather than a contingent, debt. Assuming the RP has adjusted the amount payable to an affordable level, the employer should be able to pay, albeit somewhat earlier than may have been expected.

The problem that will then arise is that the trustees would have to buy member benefits in the insurance market. Depending on the level of scheme funding, benefits acquired could be at levels below Pension Protection Fund (PPF) compensation. By implementing the plan, the employer has prevented the scheme from being able to enter the PPF because there is no insolvency event. This means the members will be 'worse off' as they will receive less than they would where PPF compensation would have been paid.

This is just one of a wide range of scenarios that are conceivable, but it is illustrative of the issues a judge would have to wrestle with. The adverse effect on the PPF of liabilities increasing as a result of the RP would also have to be argued.

> **The Pensions Regulator's regulatory powers against parties other than the employer remain available. Any 'rich friend' therefore who would be in scope of its financial support direction powers may need to get ready to support a defined benefit scheme that has been disadvantaged by an RP**

While an RP works well for the employer, applying cram down to DB pension scheme debt would in many ways appear contrary to Parliament's intentions in the pensions legislation. Notwithstanding that The Pensions Regulator has said it will probably not seek to challenge the court's decision, its regulatory 'financial support direction' powers against parties other than the employer remain available. Such parties are defined by the regulator as '*any associated or connected entities that have enough value*' to make up a shortfall between an employer's resources and its estimated s75 debt to the scheme at the relevant time[1]

Any 'rich friend' therefore who would be in scope of the regulator's financial support direction powers may need to get ready to support a defined benefit scheme that has been disadvantaged by an RP.

1 www.thepensionsregulator.gov.uk/en/about-us/how-we-regulate-and-enforce/anti-avoidance-powers

Malcolm Weir
is director, restructuring & insolvency, at the Pension Protection Fund

CCAB's guidance contains questionable recommendations

The risks identified by the CCAB on AML and CTF are generally irrelevant for the insolvency profession, says **Mark Darby**. He outlines a different approach for IPs

Following some years doing financial crime investigations and quality and risk management, Brexit and Covid suggested I should return to insolvency. In my current role, I have come across the CCAB's '*Supplementary Anti-Money Laundering Guidance for Insolvency Practitioners*', in Appendix F[1] of its guidance for the accountancy sector on how to apply anti-money laundering (AML) and counter-terrorist finance (CTF) legislation in practice.

Let us take a company going into administration where the assets will only be sufficient to pay the secured and preferential creditors with nothing for the unsecured creditors. What possible point could there be in doing due diligence on the debtor before taking the appointment? The members have no prospect of receiving anything from the insolvency's outcome. Far more important will be to investigate immediately any conduct of the directors or shareholders or whether there is potential misconduct.

It could be argued here you should also do due diligence on any charge-holder and HMRC, as they will be receiving the cash realised. And what if there were a substantial distribution to 10 unsecured creditors? How about 100 unsecured creditors? Due diligence starts to get quite expensive at this point and could remove any prospect of a dividend.

Where the CCAB gets it wrong

The CCAB gets it wrong in four ways. Firstly, at F.2 of Appendix F (see panel right on page 27), the guidance identifies four categories of risk, and I comment on these in order:

- 'Client risk'. Who is the IP's 'client' in the insolvency context? It will not be the debtor as they will derive no benefit from the service. There is no business relationship. Also there is no engagement letter.
- 'Service risk'. If the IP meets the Insolvency Code of Ethics, why would this be an issue?
- 'Geographic risk'. The location of the beneficial owner is academic if some part(s) of the creditors' group are in the UK. If there is no connection with this jurisdiction, then there is no basis for a UK IP to be appointed to a company or debtor. The location of assets is just part of the regular work routine for a qualified IP. If they cannot do that part of the job, then the Insolvency Code of Ethics would state that they either should not have taken the appointment or they should use a joint office-holder or agent to do this.
- 'Delivery channel risk'. Again the jurisdiction argument applies here. Where a director is overseas or may seek to leave the country, then we have various avenues to deal with this, including their arrest.

> **This CCAB guidance demonstrates a worrying misunderstanding of what insolvency is about. There is no business relationship between the IP and the debtor**

Whilst these are all pretty standard risks generally for the accountancy and consultancy profession, for insolvency they are generally irrelevant. Failing to meet the Insolvency Code of Ethics, statute, case law, Statements of Insolvency Practice and recognised best practice are the risks for IPs.

The fundamental flaw in Appendix F is the mistaken apprehension that the IP's business relationship is with the debtor – it quite clearly isn't. The bulk of insolvency statute and ethics is aimed at getting to a position where there can be no such relationship because the debtor could have lied, cheated and stolen before the IP was appointed and there is an over-riding duty to act in the public interest, for creditors and objectively.

Secondly, at F3.1 Appendix F, the guidance states: "*In the context of insolvency, there will always be a business relationship between the IP and the debtor or entity over which they are appointed.*"

This CCAB guidance demonstrates a worrying misunderstanding of what insolvency is about. There is no business relationship between the IP and the debtor. We perform a statutory function on the debtor with oversight from the court and the creditors' committee, where formed and, if not, from the creditors as well as our regulators. IPs remove the business and assets from the debtor and sell them for the benefit of creditors and have numerous actions which they can bring to obtain restitution from the directors and other parties. The business relationship is with the creditors and the court. Where IPs meet the Insolvency Code of Ethics requirements, there are no circumstances where an IP would otherwise turn down the engagement apart from any perceived exceptional reputational or commercial reasons.

> **It is unclear what logic exists to do AML checks before appointment as this is three months before IPs will be in a far, far better position to comment and it simply wastes valuable time, often at a point where an IP needs to take urgent action**

Thirdly, at F3.16 the guidance states "*When appointed as a liquidator, administrator, administrative or other receiver, or supervisor of an individual voluntary arrangement (IVA) or creditors voluntary arrangement (CVA), an IP's business relationship is with the debtor or the entity over which they have been appointed, not with the purchasers of their assets. In such cases, CDD* [customer due diligence] *is not required to be undertaken on the purchasers of assets*"

Bluntly, if the IP does nothing else, this is the only time they should do CDD to meet AML legislation.

Editor editor@r3.org.uk

Finally, this guidance paper does not consider members' voluntary liquidations as there is a relationship between the IP and a parent company or other beneficial owner. Other than for MVLs, any due diligence on an equity owner is pointless as they will have no economic interest in our work. The insolvency and corporate statutes reflect this. Sequana re-emphasised the West Mercia case that a director's duty on insolvency is to creditors and not to shareholders. On insolvency, members have "no skin in the game".

The unique position of IPs

The UK courts recognise the valuable and unique position of IPs and Howard Morris's article (*Recovery magazine – Spring 2023 – "The courts' trust in IPs is proof of their professionalism"*) gives examples of this. But Appendix F simply does not recognise this special position and treats the insolvent corporate entity or individual (collectively "the debtor") as if it were the client.

AML statute is important legislation and I am not advocating for a minute that it should be ignored, but it does need to be placed in its proper context where the directors are far more likely to have committed fraud and other offences on creditors.

Whatever has happened before their appointment, the IP must act objectively in compliance with the Insolvency Code of Ethics. Because of this, the IP will know little about the debtor before insolvency. What the debtor did was in the past.

The IP will, however, know a lot more about the debtor three months after their appointment when they must make the DCRS report, comply with SIP2 on investigations and any necessary return to their firm's MLRO to meet their suspicious activity reporting requirements. It is the DCRS return and such report as their MLROs make to NCA which will trigger any necessary criminal proceedings. After appointment, the IP will have access to the debtor's books and records and can use their compulsion powers under the Insolvency Act to make directors, staff and others co-operate.

> **IPs should meet AML and CTF legislation when considering the transactions with which they are directly involved. Any pre-appointment offences will be covered in their investigation reports**

So, it is unclear what logic exists to do AML checks before appointment as this is three months before IPs will be in a far, far better position to comment and, against an insolvency background where the debtor is very unlikely to receive a distribution of cash or assets from the insolvent estate, it simply wastes valuable time, often at a point where an IP needs to take urgent action. If the AML checks show an issue, then no IP could have taken the engagement which creates an issue for the creditors affected.

What would be best practice?

So, what would be best practice? If IPs can defer considering AML until they are in office, what should they do to take compliance with AML legislation seriously?

The three stages of money laundering are:

- Placement – initial deposit of illicitly obtained funds
- Layering – transfers of cash between individuals or entities to hide the true source
- Integration – the point at which the criminal has a legitimate investment or asset

> **It is vital to do due diligence on a purchaser. Where an IP cannot establish a buyer's source of wealth or consider there are other red flags, then they may prefer to sell at a lower price to a reputable purchaser**

If a company has been involved in layering or integration, for that to be an effective method of moving ill-gotten cash around then the IP will see these transactions as being at undervalue or in defraud of creditors. The IP can attack them.

But it begs the question – how can insolvency arise if the company's objective is

CCAB anti-money laundering and counter-terrorist financing guidance for the accountancy sector

Additional examples of higher risk factors that may be encountered in the context of an insolvency appointment may include (but are not limited to):	
Client risk factors	• Where the debtor, company officers or beneficial owners of the insolvent entity are the subject of a criminal investigation or civil recovery proceedings. • Where there have been cashflow issues in the business the IP should consider the possibility of fraud. • Where the debtor or the insolvent entity is a 'relevant person' within the definition of Regulation 8 of the 2017 Regulations, particularly when it has not recognised this.
Service risk factors	• Where the insolvency proceedings will involve the realisation or distribution of assets of the insolvent entity. • Where the IP cannot withdraw once appointment has been made.
Geographic risk factors	Where any of the following are within a country or countries identified as presenting high risk factors: • The country of incorporation or residence of the client; • The location of the beneficial owner; • The location of assets or trading activities conducted; • The location into which payments may be made. (See APPENDIX D of the Guidance)
Delivery channel risk factors	Where there is no personal contact with the debtor or the directors or beneficial owners of the insolvent entity.

Source: CCAB

to move money around? To allow a money laundering vehicle to become insolvent looks to be a particularly bad strategy on the criminal organisation's behalf.

It is far more likely that the directors of an insolvent company or a bankrupt has committed fraud or similar offences on its creditors.

My view is that IPs should meet AML and CTF legislation when considering the transactions with which they are directly involved. Any pre-appointment offences will be covered in their investigation reports.

The correct test should be on the buyers of the assets or a business. This goes directly to the integration step and possibly the layering stage of the three stages of money laundering. It is vital to do due diligence on a purchaser. Where an IP cannot establish a buyer's source of wealth or consider there are other red flags, then they may prefer to sell at a lower price to a reputable purchaser.

Another side to look at is to whom the IP is paying money when focusing on counter-terrorist finance. IPs have, from time-to-time, come under pressure from terrorists to pay them to avoid the risk of exposing either themselves to personal harm, or the business and assets to an implied threat of damage.

IPs should also look at the creditor group as part of the SIP 2 investigation phase of the case and consider whether the creditor group could form part of a criminal scheme. The current sanctions requirements in part meets this concern around the integration stage of making distributions.

Finally, it would help if the guidance could answer whether IPs could approach the court, given the offence of "tipping off".

What else should we do? The test is a simple one – report any criminality observed, justify the *bona fides* of those to whom you have sold assets and ensure no funds were, or are, paid to a terrorist or other criminal organisation.

Case study

There needs to be clearer thinking. Take for example the insolvency of a car dealership where the management had sold £1.8 million of cars for cash in the previous two years to a criminal gang. This gang used the cars for a short time and then sold them at an auction to generate a clean, bankable cheque. An IP is very unlikely to pick up this type of money laundering offence before they get into the detail of the business's operation. In this case, it was the IP's staff who spotted it.

When the administrator then sells this business, should they submit a Defence Against Money Laundering before making a distribution to creditors? At what point is that triggered given the taint of money laundering on the business? Does it matter what the level of turnover was with the gang? As this would be duplicating previous DCMS and MLRO submissions they had made, what would be the point of looking at this?

The AML test on distributions should be whether the nature of the creditor base or the debtor's business suggest that the debtor was a money launderer.

> **"What might be helpful for the profession is if the CCAB were to set out some examples – hypothetical or otherwise – of where a money launderer goes into insolvency and whether the IP can then take the appointment"**

My view is that, in looking to replicate similar processes for a wider accountancy and consultancy profession, the CCAB guidance paper contains questionable recommendations if the objective is to implement effective controls around the risks of money laundering and financing terrorism.

It largely ignores the background of statute, regulations, case law and practical experience of IPs and their interaction with the criminal justice system. Perhaps this guidance might be better structured within a hopefully briefer Insolvency Code of Ethics.

What might be helpful for the profession on the other hand is if the CCAB were to set out some examples – hypothetical or otherwise – of where a money launderer goes into insolvency and whether the IP can then take the appointment. The profession is quite used to debtors where there is some degree of criminality.

Stop press: Having read Jo Milner's article in the last edition of *Recovery* ('Sanctions warning as airline administration stalls') and attended the ICAEW Restructuring and Insolvency session that David Buchler and she ran, the issues I have identified in this article have led to the prospect of the liquidation of a viable and profitable business because of the fixation on the owner who is a designated person rather than the wider stakeholders

The views expressed in this article are those of the author and not necessarily those of Evelyn Partners.

1 www.ccab.org.uk/wp-content/uploads/2022/05/insolvency-appendix-final-002.pdf

Mark Darby is insolvency compliance manager at Evelyn Partners

‘Mission vs mammon’ dilemma needs emotional intelligence

IPs helping charities in financial difficulty need to recognise the sector’s unique pressures and characteristics, say **David Fendt**, **Clare Mills** and **Adam Stephens**

A pandemic, followed by an economic crunch with high inflation and rising interest rates, the decline in the use of cash, significant change through Brexit… As with every other economic sector in the UK, charities (a term which in this article also includes voluntary, community and social enterprises) are feeling the effects.

Giving and income

According to Clare Mills, director of policy and communications at trade body Charity Finance Group, the popular perception is that charities receive all their income from public donations. But the reality is that across the sector, there is a wide variety of business models and income streams.

Restructuring professionals called in to advise may come across public donations, legacies, community fundraising (e.g. collecting sponsorship money for challenge events), commissioned services (e.g. adult social care, education, housing and homelessness, youth work), grants (e.g. from trusts, foundations and the public sector), trading income (e.g. selling space at events, training courses, property income (e.g. room/building hire), social enterprise activities, corporate partnerships (e.g. sponsorship of events and projects), and investment income.

> **It may be that the people managing an unincorporated organisation have not been made aware of their potential personal exposure, so an IP should explore the question of structures and personal liability with care**

The public response to the invasion of Ukraine helped make 2022 the most generous year on record for giving, with an estimated £12.7 billion in donations.[1] However, it is also estimated that inflation may have eroded the value of this generosity by more than £500 million.[2]

Mills explains: “For those charities that hold contracts to deliver public services, inflation has significantly increased costs. Many such contracts are already subsidised by charities through other income-generating activities. On grants, although some funders have independently increased their grant funding to recognise the impact of inflation, this is discretionary and is not universal. For charities with property assets, the move to remote working has also had an impact on

> **The legal structure isn't just an arcane academic point – it can limit the insolvency options. An unincorporated trust, where the trustees are personally liable, probably means that the customary suite of insolvency options are unavailable**

their ability to rent out surplus or underused space. For those that organise in-person events, the significant switch to digital or virtual events and training has also reduced those opportunities."

Mills adds: "The silver lining is that charities are seeing greater returns on their investments, but we know many charities used the bulk of their reserves to support operating costs during the pandemic. Despite the support offered by the government to businesses, not all charities could make use of the funding on offer due to their business models and structures."

Under pressure

Charities, like most sectors, are under pressure to increase wages in line with inflation. In a (very) few cases, charity staff have been striking over pay, but more widely vacancies are left unfilled and retaining staff is increasingly difficult, with some lower paid workers leaving the charity sector altogether in search of higher pay.

Costs throughout the supply chain have increased. Energy prices have had a particular impact on charities providing essential human services such as hospices, accommodation for people in housing need, and disability support, where energy is essential to keep people warm and safe, and to operate life-supporting and enhancing equipment.

A different but equally serious pressure comes from rising demand for services, with 81% of charities saying that demand for their services has increased compared with a year ago.[4] Anecdotally, charity leaders are also reporting people with more complex needs. For example, debt advice queries now also reveal issues with housing, employment, mental and physical health, and more.

Legal structures

It is against the above background that IPs will be called into charities to guide them through the difficult times ahead. However, doing so comes with various unique challenges.

The main point to determine at the outset is the charity's legal structure, of which there is a wide variety [see panel on next page]. Some will be incorporated (which means a separate legal personality, protecting the trustees/directors/members by limiting their liability), whereas other will be unincorporated (meaning that the people who run it are likely to be personally responsible for its debts and other liabilities). It may be that the people managing an unincorporated organisation have not been made aware of their potential exposure, so an IP should explore the question of structures and personal liability with care.

All the information about the governance and legal structure should be set out in the organisation's governing document (which, depending on the structure, could be a 'constitution', 'memorandum & articles of association' or 'trust deed').[5]

As Adam Stephens, an IP and partner at Evelyn Partners, highlights: "The legal structure isn't just an arcane academic point – it can limit the insolvency options. An unincorporated trust, where the trustees are personally liable, probably means that the customary suite of insolvency options are unavailable.

"Certain incorporated structures may also require particular considerations. For example, Royal Charter companies have much more limited options, and a charitable incorporated organisation requires a modified CVA procedure."

An organisation might be registered with the FCA, rather than Companies House, as is the case for community benefit or industrial and provident societies. This is not too troublesome to deal with, but means that you need to know where to send your various statutory forms (and investigate their format – often a modestly adjusted Companies House form will suffice).

Asset lock and restricted funds

Next, it is important to understand whether any assets are held on particular trusts, which

> **One of the main challenges in dealing with the charitable sector can be the absence of complete, accurate, and historic legal and accounting records, particularly with charities set up many years, possibly centuries, ago**

> **An IP should be mindful to frame solutions, if at all possible, around the mission (which might include safeguarding the legacy of the organisation)**

make them unavailable to creditors. This could be a permanent endowment fund, or property. These assets would be ring-fenced and fall outside of the corporate property of the charity, and cannot be sold or used for security to meet creditors' claims. There are some potential options to deal with this, including the possibility of asking the settlor, or seeking the permission of The Charity Commission, for a change in the purpose of the trust.

Related to this is the term 'restricted funds', which is often seen on a charity's balance sheet. This may equate to assets held on trust, but not necessarily, and the two should not be taken to be equivalent.

One of the main challenges in dealing with the charitable sector can be the absence of complete, accurate, and historic legal and accounting records, particularly with charities set up many years, possibly centuries, ago. An IP will often end up acting like a detective, piecing together the puzzle to work out if the restricted assets are held on trust.

Understanding missions

Stephens adds: "Perhaps the most unique matter we have encountered in the charitable sector is the need for emotional intelligence: understanding the motivations for the management and trustees, and to be able to modestly articulate that back to them. There is the 'mission versus mammon' challenge. These organisations are, by and large, not motivated to make profits for personal gain but, rather, are motivated to make profits in order to further the charity's mission."

An IP should be mindful to frame solutions, if at all possible, around the mission (which might include safeguarding the legacy of the organisation).

Trustees' roles

Charities may feature some, or all, of the following roles:

1) All charities will have **trustees**;

2) Charitable companies may have **directors**;

3) For some entities, such as charitable incorporated organisations (CIOs) and charitable companies limited by guarantee, the trustees will also be **members**, with

Legal structures

Incorporated legal structures

	Who controls	Who is the regulator?	Limited liability?	Profit distribution?	Charitable status available?
Charitable incorporated organisation (CIO)	Board of trustees	The Charity Commission	Yes	No	Yes, automatic
Company Limited by Guarantee (CLG)	Board of directors	Companies House (and Charity Commission if it has charitable status)	Yes	Usually no	Yes (if purposes are solely charitable)

Unincorporated legal structures

	Who controls	Who is the regulator?	Limited liability?	Profit distribution?	Charitable status available?
Charitable trust	Board of trustees	The Charity Commission	No	No	Yes
Unincorporated association	Management committee	The Charity Commission	No	No	Yes (if purposes are solely charitable)

Other legal structures

Companies limited by shares:

• Limited by shares, meaning it is owned by shareholders who have certain rights.

• Regulated by Companies House.

Companies limited by guarantee:

• Limited by guarantee, meaning it has guarantors and a 'guaranteed amount'.

• Many companies that have no charitable purpose also adopt this legal structure.

• Regulated by Companies House.

Community interest companies (limited by shares or guarantee):

• A limited company, with special additional features, created for the use of people who want to conduct a business or other activity for community benefit.

• Regulated by the Office of the Regulator of Community Interest Companies, and Companies House.

Community benefit societies:

• Formed primarily for the benefit of people who are not members of the society and this must be in the interest of the community at large.

• Regulated by the Financial Conduct Authority.

Co-operative societies:

• Formed primarily to benefit its own members who will participate in the primary business of the society.

• It signs up to The International Cooperative Alliances' values and principles.

• Regulated by the Financial Conduct Authority.

Limited liability partnerships:

• A separate legal entity from its members (partners) who are only liable for the amount of money they invest, plus any personal guarantees.

• Incorporated at Companies House and can only be used by profit-making businesses.

• Regulated by Companies House.

Donor advised funds (DAFs):

• An alternative to having a personal (family) standalone charitable foundation.

• Set up with a DAF provider such as the CAF Charitable Trust.

Source: NVCO

powers to pass any relevant resolutions (perhaps placing the organisation into liquidation).

Most readers will likely be familiar with the differences between these roles, but it should be established at the outset what role(s) 'trustees' (the customary catch-all term for all three) play in the organisation. Importantly, these roles are also distinct from senior management with executive responsibility for the organisation. Trustees do not customarily have day-to-day responsibility (even if, for organisations registered at Companies House, they are likely to be recorded as *de jure* directors).

Charities are facing unprecedented challenges in this economic climate, and IPs will need to guide them through these difficult times, whilst at the same time recognising the sector's unique pressures and characteristics.

1 https://www.cafonline.org/docs/default-source/about-us-research/uk_giving_2023.pdf
2 https://www.probonoeconomics.com/news/pbe-reacts-ons-inflation-stats-september-2022
3 https://www.thinknpc.org/resource-hub/recognising-social-value/
4 https://www.cafonline.org/about-us/press-office/cost-of-living-charities-still-struggling-to-meet-demand-and-cover-costs
5 The NCVO information on governing documents can help clarify exactly what type of charitable organisation you are dealing with: https://www.ncvo.org.uk/help-and-guidance/setting-up/choosing-your-legal-structure/#/

David Fendt is a senior associate in the insolvency department at Russell-Cooke. **Clare Mills** is director of policy and communications at Charity Finance Group. **Adam Stephens** is a partner and insolvency practitioner at Evelyn Partners.

***Pippa Garland**, partner, charity law at Russell-Cooke also contributed to this article.*

Trading subsidiaries pose special set of challenges for advisers

Managing conflicts of interest between a charity and its subsidiary is one of many issues to be dealt with if the subsidiary gets into difficulty, says **Sam Dixon**

Plenty of charitable companies have wholly owned trading subsidiaries (tradecos). Not only are such tradecos permissible, but they are also often of great benefit to their parent charity. Because they are allowed to gift aid their profits to their parent, the parent can benefit from trading profits without paying tax on those profits. The added benefit of this structure is that it insulates the parent from trading risks.

While a tradeco can bring great benefits to charities, the arrangements present a specific set of challenges if the tradeco gets into financial difficulties.

Understanding the current structure

We have all seen corporate groups where there is uncertainty as to how assets and liabilities are allocated. Whether as a result of limited resources or market practice, this problem seems more acute in the case of tradecos.

> **Given the frequent blurring of the lines, good tradeco-level management information is often not available. Putting this in place quickly is critical to understanding tradeco's actual performance**

An early step in any tradeco restructuring is to get to the bottom of what sits where. It is important to understand how things are supposed to be. There is no point in successfully restructuring a tradeco only for it to hit significant tax, governance and regulatory problems down the line. Bear in mind that tradecos are separate entities to the parents and any blurring of the lines could result in the loss of the benefits of using a tradeco in the first place.

Who owns the property from which the tradeco operates? The tradeco must have a legal right of occupation. Charity Commission Guidance CC35 (the guidance) makes clear that the tradeco's occupation of property owned by its parent must be on a proper contractual basis and on commercial terms. The tradeco should therefore be paying an open-market rent. If there is uncertainty, it would be prudent to get a professional valuation. If a lease or licence is not already in place, this could affect timings as granting one will require Charity Commission consent.

Who owns the equipment that the tradeco uses? Cost-sharing arrangements with the parent charity are permissible but can be challenged by HMRC if the costs are not shared appropriately (based on the cost to the parent). The guidance is clear that where equipment is exclusively used by the tradeco, the tradeco should own it. If it does not, consideration will need to be given as to how tradeco can finance the acquisition of the equipment.

> **The expectation that profits are gift-aided to the parent undermines the ability to raise finance or seek commercial investment**

Similar considerations apply to employees. Where employees are shared with the parent, these could appropriately be employed by the parent and the costs shared (so long as the costs are paid and not left as a disguised loan). However, where employees are exclusively

employed in the tradeco, the tradeco should be the employer.

Given the frequent blurring of the lines, good tradeco-level management information is often not available. Putting this in place quickly is critical to understanding tradeco's actual performance. If it turns out that tradeco has not been meeting its own liabilities (for example, because the parent has wrongly entered into contracts with suppliers and has been making payment), there might be significant sums due from tradeco to the parent, which could make any rescue much harder.

"If trustees invest in a struggling tradeco and the tradeco does not survive, the trustees may face personal liability"

As a key benefit of tradecos is their tax efficiency, confirmation should be sought that gift aid payments have been made on time. Missing the deadline can give rise to a tax liability on the relevant profits. If a tradeco is profitable but lacks liquidity, this can make a rescue even harder.

Preparing for a funding request

Where an operational turnaround can be delivered using the tradeco's existing resources, the principles are the same as for any other private company. However, where further funding is required, there are a number of specific challenges. The expectation that profits are gift-aided to the parent undermines the ability to raise finance or seek commercial investment. Similarly, parent guarantees will not generally be available. As a result, for most tradecos, any further funding will need to come from the parent.

While the parent will probably have an executive team, the real decision makers will be the trustees. The trustees will be volunteers and they will often not have the same level of availability or be able to commit the same amount of time as an executive board. It is therefore important to do as much of the 'leg work' for them as possible so that their decision to support the tradeco is as easy as possible.

The tradeco's board is often made up of trustees so the directors will need to be reminded of their two distinct roles. Practically, thought should be given to following the guidance that recommends that tradecos have at least one director who is neither an employee nor a trustee of the parent charity. There should additionally be at least one trustee of the parent that is not a director of the tradeco. Putting these independent roles in place will make it easier to negotiate any funding request and manage any conflicts of interest appropriately.

A key preparatory step is to prepare a business plan with supporting cash flow forecasts, profit projections and risk analysis. These are documents that the parent's trustees should be asking to see as part of any decision to provide further support.

Negotiating further investment

When it comes to negotiating further investment from the parent, whether by way of debt or equity, it is important to understand the high bar that needs to be cleared. If trustees invest in a struggling tradeco and the tradeco does not survive, the trustees may face personal liability.

The trustees are likely to feel they have a moral obligation to the tradeco's directors and employees but this must not influence their decision on funding. That decision should be assessed in the same way as any other investment by the charity. Trustees often also consider the risks of reputational damage to the charity if its tradeco fails. The trustees must be cautious about using the charity's assets to avoid an insolvency of a tradeco as that would seem to undermine the benefit of the use of a tradeco in protecting the charity's assets from trading risks.

"A big challenge will be persuading the trustees that the tradeco is the best available opportunity for investment and that the charity could not get a better return on its investment or loans, relative to the risk, elsewhere"

There are also things that should be kept off the table to avoid wasting time. A parent charity cannot purchase stock for the tradeco, nor can it settle tradeco's debts.

In making the decision, the trustees will need to comply with the charity's investment powers and policy. They are also likely to take investment advice. A big challenge will be persuading the trustees that the tradeco is the best available opportunity for investment and that the charity could not get a better return on its investment or loans, relative to the risk, elsewhere.

Contingency planning

Tradecos are not registered charities. They are usually private limited companies and therefore the usual insolvency processes are available if needed.

On the face of it, the restructuring of a tradeco will be a familiar process. However, when it comes to seeking further funding and delivering a consensual restructuring, there are a number of specific challenges that advisors need to be mindful of if they are to successfully deliver a solvent solution.

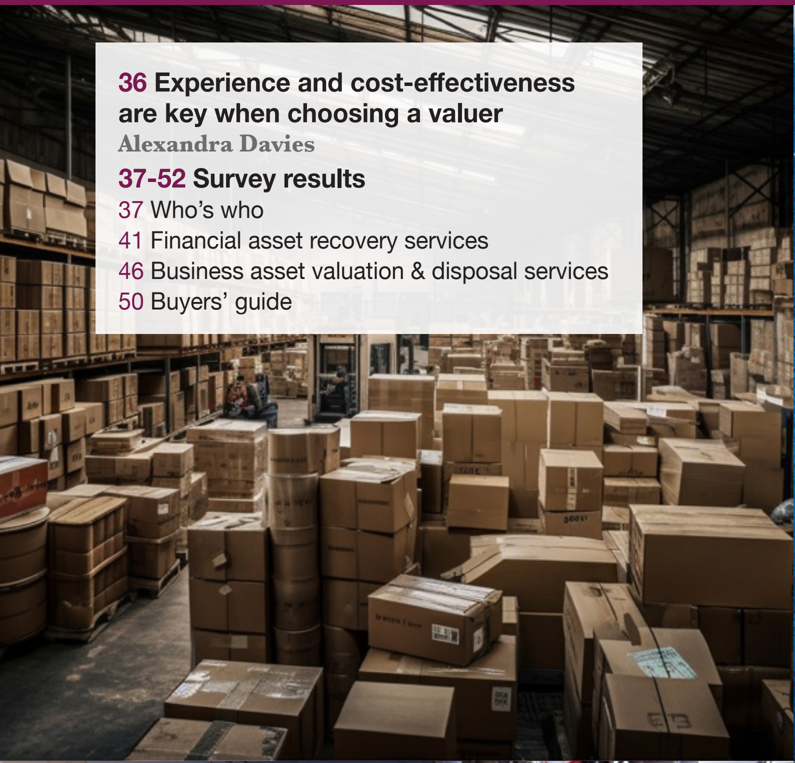
Sam Dixon is a partner at Womble Bond Dickinson

Correction

In the Summer 2023 edition of *Recovery* in the article titled '*Schedule B1 exceptions pose problem for IP remuneration*' by James Morgan KC and Amy Flavell (pages 15-17), there were two errors made by the publisher in the course of the editing process. In the penultimate paragraph on page 16, the line: "But as the former specifically refers to the need for a 'decision procedure' (rather than consent) and that procedure is governed by provisions including r15.11 and r15.31, the latter must be applied." The line should have read: "But as the former specifically refers to the need for a 'decision procedure' (rather than consent) and that procedure is governed by provisions including r15.11 and r15.31, the latter **should** be applied." In the penultimate paragraph on page 17, the line "We consider it marginally more likely than not that a court would prefer interpretation (i) in relation to rules 18.26, 18.29, 18.30 and 18.32" should have read: "We consider it marginally more likely than not that a court would prefer interpretation **(ii)** in relation to rules 18.26, 18.29, 18.30 and 18.32". The publisher offers its sincere apologies.

SURVEY:
Asset realisation services

36 Experience and cost-effectiveness are key when choosing a valuer
Alexandra Davies
37-52 Survey results
37 Who's who
41 Financial asset recovery services
46 Business asset valuation & disposal services
50 Buyers' guide



Experience and cost-effectiveness are key when choosing a valuer

Asset valuations are the bedrock of effective IP decision-making. **Alexandra Davies** outlines some of the considerations that help ensure their accuracy and reliability

As insolvency practitioners, we navigate complex financial landscapes to manage distressed businesses and protect the interests of creditors. Accurate valuations play a pivotal role in guiding our decision-making processes. The three key reasons why valuations are of utmost importance to IPs are their impact on strategy, their ability to mitigate legal risks, and their role in mitigating risks associated with assets.

Valuations are indispensable tools that inform and shape our strategic approach when dealing with distressed businesses. By accurately assessing the value of a company's assets, liabilities, and potential future cash flows, we gain valuable insights into the viability of restructuring plans, potential sale opportunities, or liquidation options.

For instance, a comprehensive valuation may reveal that a company's assets are undervalued, indicating room for potential recovery. In such cases, we can devise strategies that capitalise on these hidden values, such as negotiating debt restructuring or identifying potential buyers who may pay a premium.

Risk mitigation tool

On the other hand, if valuations indicate a lack of viable recovery options, proactive measures can be taken, such as initiating liquidation proceedings, to maximise returns for creditors. In these situations, accurate valuations guide us in making informed decisions that align with our duty to act in the best interests of all stakeholders.

As the office-holder of an insolvent estate, we are vulnerable to potential legal challenges from creditors who may question our decisions or suspect misconduct. Independent valuations conducted by qualified professionals can serve as a powerful defence against such allegations.

An independent valuation provides an unbiased assessment of the company's financial position and assets, ensuring transparency and fairness. It demonstrates that any decisions made by office-holders are based on objective evidence and professional expertise, reducing the likelihood of legal disputes arising from perceived conflicts of interest.

> **"In the case of plant and engineering assets, valuations can help us assess maintenance risks and potential health and safety hazards"**

Moreover, an independent valuation can be instrumental in demonstrating we have followed due diligence procedures and complied with the regulatory requirements of our profession. This not only protects us from potential litigation but also fosters trust and confidence among creditors.

In the course of our work, we often encounter distressed businesses with various types of assets, each carrying its own set of risks. Valuations serve as a risk mitigation tool by enabling us to identify and manage potential risks associated with these assets effectively.

Adequate insurance coverage

For instance, if a property asset is involved, an accurate valuation can shed light on insurance risks. By understanding the property's true value, we can ensure that adequate insurance coverage is in place to safeguard against potential losses due to fire, natural disasters, or other unforeseen events.

Similarly, in the case of plant and engineering assets, valuations can help us assess maintenance risks and potential health and safety hazards. By identifying critical maintenance requirements or outdated machinery, therefore, should any remedial actions be required, the office-holder can assess the cost in undertaking these and if required, ensure compliance with safety regulations and mitigate the risk of accidents or legal liabilities.

Valuations form the bedrock of effective decision-making for IPs. They not only help ensure the best possible strategy is in place but also serve as a shield against potential legal challenges. Additionally, valuations enable us to identify and mitigate risks associated with distressed assets, ensuring the best possible outcome for creditors.

When an IP is choosing a valuer or chartered surveyor, several key considerations come into play to ensure the accuracy and reliability of the valuation or survey. Here are some factors that an IP should take into account:

• Professional indemnity insurance: It is essential that the valuer or chartered surveyor holds adequate professional indemnity insurance. This insurance provides protection in the event of errors, omissions, or negligence in their work. The IP should verify that the valuer's insurance coverage is sufficient to safeguard against any potential claims.

• Industry experience: The valuer's experience in the specific industry relevant to the insolvency case is vital. Their knowledge of the industry dynamics, market trends, and regulatory requirements ensures a more accurate valuation or survey. The valuer's track record and expertise in similar scenarios should be assessed prior to any instruction.

• Engagement considerations: The IP needs to be aware of certain engagement aspects when choosing a valuer or chartered surveyor. This includes their geographical location in comparison with the property or assets being valued. Proximity can facilitate site visits and enhance the valuer's understanding of local market conditions. Additionally, the IP should consider the costs associated with the engagement, ensuring they align and are reasonable compared to the asset valuations.

Overall, the IP's choice of a valuer or chartered surveyor should prioritise their professional indemnity insurance coverage, relevant industry experience, and engagement considerations such as geographical location, and cost-effectiveness. Thoroughly evaluating these considerations will contribute to a more accurate and reliable valuation or survey outcome, aiding the insolvency process and the decision making required by the IP.

Alexandra Davies is a senior manager at Menzies

Who's who

Trading name	Contact details for IPs	Website	Address	Top/parent company in group, Reg country | Reg No	Who regulated by
Anvil Business Advisory Ltd	Roger Lownsbrough, roger@anvilba.co.uk, 07815 041 052	www.anvilba.co.uk	The Old Forge, Calver Road, Baslow DE45 1RP	Anvil Business Advisory Ltd, England | 10354720	N/A. Anvil Business Advisory Ltd is unregulated. Our work is business to business
Axia VS	Graham Thomas, graham.thomas@axiavs.co.uk, 01277 312 102	https://axiavs.co.uk	23 Tallon Road, Hutton, Essex CM13 1TE	Axia Valuation Services Limited, England | 09613514	National Association of Valuers & Auctioneers (NAVA); R3
BPI Asset Advisory Ltd	Andrew Cromack, andy@bpiaa.com, 01924 245 040 / 07545 320 045	www.bpiaa.com	Ripley House, Ripley Drive, Normanton WF6 1QT	BPI Asset Advisory Ltd, England | 11705155	RICS
CCI Credit Management Ltd	Graeme Harley, graeme.harley@ccicm.com, 07427 240 795	www.ccicm.com/credit-management advisory-debt recovery	The CCI Centre, Snowdonia Business Park, Porthmadog LL48 6LD	CCI Credit Management Ltd, England | 04358908	FCA
Credebt Ltd	Glen Morgan, glen@credebt.co.uk, 08456 385 256	www.credebt.co.uk	Trym Lodge, 1 Henbury Road, Westbury on Trym, Bristol BS9 3HQ	Credebt Ltd, England | 06933734	Credit Services Association; UK Finance; Institute for Turnaround
Delv Limited	Andrew Williamson, andrew.williamson@delvltd.com, 020 3951 7018	www.delv.ltd	124 City Road, London EC1V 2NX	DELV Limited, England | 12197200	Not applicable
European Valuations	John Lawrence, jlawrence@eurovals.co.uk, 020 7048 0184	www.eurovals.co.uk	Suite 111, Somerset House, 37 Temple St, Birmingham B2 5DP	Ensco 1078 Ltd, England | 09086864	RICS
G J Wisdom & Company	office@gjwisdom.co.uk, 020 8300 9828	www.gjwisdom.co.uk	Units 1-2 & 9 Faraday Way Industrial Est, Faraday Way, Orpington BR5 3QW	G J Wisdom & Co Ltd, England | 5312848	Propertymark NAVA.
Gavel Auctioneers Limited	Thomas Cole, thomas@gavelauctioneers.com, 0330 808 0113	www.gavelauctioneers.com	The Auction Centre, Van Road, Caerphilly CF83 3SG, Wales	Gavel Holdings Limited, Wales | 09735314	RICS
Global Corporate Solutions	Mike Hartley, mikeh@globalcorporate.uk, 08450 942 572	www.globalcorporate.uk	76 King Street, Manchester M2 4NH	Global Corporate Ltd, England | 09545417	Regulated by the ICO for the purposes of data processing only. The collection of commercial and assigned debts are exempt from FCA regulation
GMG Asset Valuation Ltd	Mark Grier, mark@gmgsales.com, 07770 844 800	https://asset-valuation-sales.com	Eastcroft House, 25 Woodhall Road, Wishaw, North Lanarkshire ML2 8PY, Scotland	GMG Asset Valuation Ltd, Scotland | SC524951	FCA
Gordon Brothers	Neal Weekes, nweekes@gordonbrothers.com, 020 7647 5120	www.gordonbrothers.com	13 Hanover Square, London W1S 1HN	Gordon Brothers International LLC, England | BR005332	*n/s*
Herts Valuations	Rory Geraghty, rgeraghty@hertsvaluations.co.uk, 01438 716 010 / 07968 442 233	www.hertsvaluations.co.uk	Broad House, The Broadway, Hatfield, Herts AL9 5BG	Herts Valuations Ltd, England | 04866608	*n/s*
Hickman Shearer	Tim Chapman, tchapman@hickman-shearer.co.uk, 07508 909 961	www.hickman-shearer.co.uk	Suite 15, Innovation House, John Smith Drive, Oxford OX4 2JY	Hickman Shearer Ltd, England | 09556189	RICS
Hilco Valuation Services	Peter Atkinson, patkinson@hilcoglobal.eu, 020 7374 5300	www.hilcovs.co.uk	11 Ironmonger Lane, London EC2V 8EY	Hilco Global, Chicago, USA | *n/s*	RICS; FSQS; NARA
Hilton-Baird Collection Services Limited	Alex Hilton-Baird, cs@hiltonbaird.co.uk, 023 8070 6981	www.hiltonbairdcollections.co.uk	Woollen Hall, Castle Way, Southampton SO14 2AW	Hilton-Baird Management Services Limited, England | 09719155	FCA. Credit Services Association (CSA) member

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Who's who

Trading name	Contact details for IPs	Website	Address	Top/parent company in group, Reg country | Reg No	Who regulated by
ITC Valuers	Jake Taylor, jake.taylor@itcvaluers.co.uk, 07985 567 330	www.itcvaluers.co.uk	Brickfield House, High Road, Thornwood, Epping CM16 6TH	ITC Valuers, England | 05844385	*n/s*
JPS Chartered Surveyors	Mark Isaacs, mark.i@jpssurveyors.co.uk, 0161 767 8001	www.jpssurveyors.co.uk	Worth House, Unit 32 Stanley Road, Whitefield, Manchester M45 8QX	JPS (Surveyors) Limited, England | 50175249	RICS
Key Appraisal Limited	Mark Humphrey, info@keyappraisal.co.uk, 020 7936 4196	www.keyappraisal.co.uk	Tallis House, 2 Tallis Street, London EC4Y 0AB	Key Appraisal Limited, England | 6511634	RICS - Machinery & Business Assets Professional Group
Kumar & Company Limited	Rajiv Kumar, rajiv.kumar@kumarandco.co.uk, 0121 389 1974	www.kumarandco.co.uk	Unit 1, North Street, Walsall WS2 8AU	Kumar & Company Limited, England | 7037956	RICS; associate members of R3
Lambert Smith Hampton	Nick Blackwell, nblackwell@lsh.co.uk, 07979 541 236	www.lsh.co.uk	55 Wells Street, London W1T 3PT	Connells Ltd, England | 03187394	RICS; NARA; IPA
Landwood Group	Helen Jude, helen.jude@landwoodgroup.com, 0161 710 2010	www.landwoodgroup.com	Lancaster Buildings, 77 Deansgate, Manchester M3 2BW	MRA Professional Services Group Ltd, Wales | 11681728	RICS; IPA
LPL Commercial Investigations	Richard Levene, rlevene@lplgroup.com, 020 8551 4019	www.lplgroup.com	67 Queens Road, Buckhurst Hill, Essex IG9 5BW, UK	ARG Holdings Ltd, England | 13897255	CSA
McQueen Partnership	Nathan McQueen, nathan@mcqueenpartnership.com, 07359 343 966	www.mcqueenpartnership.com	1 Aire Street Leeds LS1 4PR	McQ Partnership Ltd, England | 13301182	N/A. We only assist in business to business debt recovery, not consumer regulated debt
Metis Partners Ltd	stephen robertson, stephen@metispartners.com, 0141 353 3011	www.metispartners.com	21 Woodside Place, Glasgow G3 7QL	*Metis Partners Ltd, Scotland | n/s*	*n/s*
MGR Appraisals	Richard Mascall, richard.mascall@mgrappraisals.com, 0121 200 2206	www.mgrappraisals.com	Grosvenor House, 11 St Pauls Square, Birmingham B3 1RB	MGR Appraisals Management Limited, England | 08856787	RICS
Naismiths Limited	Ben Harwood, ben.harwood@naismiths.com, 07944 709 845	www.naismiths.com	Birmingham	Naismiths Holdings Limited, England | 11379714	*n/s*
New England Auctions	Tom Heath Jnr, tomjnr@newengland.co.uk, 0121 544 9867	www.newengland.co.uk	4 Union Road, Oldbury B69 3EX, England	New England Engineering, England | 00984965	*n/s*
Pact Property & Assets Limited	Pact Property & Assets Limited, chris.price@pactproperty.co.uk, 07979 541 215	www.pactproperty.co.uk	First Floor, Palace Chambers, 41 London Road, Stroud GL5 2AJ	N/A	RICS; NARA; HMRC (money laundering)
Realise Solutions	Adam Costigan, adam@realisesolutionsuk.com, 023 8194 0620	www.realisesolutionsuk.com	Wessex House Upper Market Street, Eastleigh, Hampshire SO50 9FD	Realise Solutions UK Limited, England | 08843134	NAVA
Robson Kay Associates Ltd	Jonathan Kay, jonathan@robsonkay.co.uk, 0161 998 8111	www.robsonkay.co.uk	Robson Kay House, Tilson Road, Manchester M23 9GF	Robson Kay Holdings Ltd, England | 12952156	NAVA Propertymark
Sanderson Weatherall LLP	Mark Crow, mark.crow@sw.co.uk, 07725 790 912	www.sw.co.uk	6th floor, Central Square, 29 Wellington St, Leeds LS1 4DL	Sanderson Weatherall Group Ltd, England | 04870380	RICS
Thainstone Specialist Auctions	Neil Simpson, neil.simpson@anmgroup.co.uk, 07760 426 241	www.tsaauctions.co.uk	ANM Group, Thainstone Centre, Inverurie, Aberdeenshire AB51 5XZ	ANM Group, Scotland | SP1231RS	Institute of Auctioneers; FCA

Key:
= Value and/or sell business assets belonging to companies that are insolvent or in administration
= Track down/collect monies owed to companies that are insolvent or in administration
= Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Who's who

Trading name	Contact details for IPs	Website	Address	Top/parent company in group, Reg country | Reg No	Who regulated by
The Debt Recovery Bureau ■	Neil Bowler, nbowler@tdrb.co.uk, 0800 440 2358	www.tdrb.co.uk	Colmore Building, 20 Colmore Circus Queensway, Birmingham B4 6AT	The Debt Recovery Bureau LLP, England | OC316500	*n/s*
Williams & Partners ■	Antony Berg, antony@wapl.co.uk, 020 3195 1407	www.wapl.co.uk	11 Leys Business Centre, Chelmsford Road, High Ongar, Essex CM3 9NW	Williams & Partners Ltd, England | 06642212	NAVA Propertymark; The Property Ombudsman; the director is an officer of The Supreme Court of England & Wales
Wilsons Auctions ■	Rebecca Wilson, rebeccawilson@wilsonsauctions.com, 07899 666 040	www.wilsonsauctions.com	22 Mallusk Road, Newtownabbey, Co Antrim BT36 4PP	Wilsons Auctions Ltd, Northern Ireland | NI011967	Wilsons Auctions is not regulated as there are no regulation bodies for auction service providers

Financial asset recovery services (Table 1)

Trading name	Years providing services	Approx % of turnover that relates to services for UK IPs	Services	How different to other providers
Anvil Business Advisory Ltd ■	7	50%	The best outcome for the creditors can only be delivered with the best recovery results. We do not just pick the low hanging fruit, we ensure that all debts are pursued comprehensively, with the aim of a successful recovery.	Outsourcing the debt recovery work allows your team to focus on their core work. Our fees are success based, a percentage of what we recover for you. Our strong work ethic is your assurance of a successful recovery.
CCI Credit Management Ltd ■	35	20%	Collecting out or buying book debt portfolios. Consumer and Commercial, domestic and international. This will maximise fee income for the IP. No win, no fee commission-only, based only on positive results.	We also collect debt internationally. We have agents in 130 countries globally - consumer or commercial. No minimum or maximum limit for volume or value. We are a one-stop shop for worldwide compliant debt recovery - no win, no fee.
Credebt Ltd ■	14	25%	Main services – insolvency practitioners. Debtor collateral review. Pre-appointment credit control. Re-assigned ledger collections. Collect out. Advice on the timing of appointment and other guidance. Other services.	All staff have minimum 15 years' experience and company approaching 15 years now. Director-led recoveries lead to higher success rate. We have worked on 2000 cases to date, including lots of construction cases and 90% of these have exceeded SOA figure.
Delv Limited ■	3	80%	Identification and recovery of compensation and interest owed to companies for the late payment of their invoices. Using our own database or client finance systems/data we can recover compensation for invoices settled up to six years previously.	Our database covers more than five million late paid invoices, issued by almost 250,00 UK companies. We also provide a fully managed service – including the recovery or collation of transactional data and an end-to end claims management process.
Global Corporate Solutions ■	8	75%	We accept contingent instructions to recover a full array of debts and claims, including those of relatively low value, absconded debtors, claims against directors, or instances where others have declined to act. Whether a full debtor ledger or a single claim, we offer decisive action to promptly and effectively pursue what's owed. Appropriate proceedings are either issued in-house or in conjunction with one of our partner law firms; with no cost risk to the estate or instructing IP.	We have built up a solid reputation amongst sole and small practice IPs for being genuinely adaptive and responsive to their needs, offering fully contingent debt/claim recovery and assignment options on a wide variety of debts, causes of action and claims. We also accept instructions or assignments to pursue antecedent claims/claims against directors; even those smaller claims that regularly fail to pique the interest of the bigger providers.
GMG Asset Valuation Ltd ■	20	50%	We assist IPs with the collection of debtor books. One area where we believe we can add value is the management of vehicle fleets in some Insolvencies where we can provide maintenance services therefore maximising the recovery from contracts for IPs.	It is part of the full range of services that we can provide an IP. The ability to tailor a solution to a specific circumstance and deliver an excellent outcome is something that we are very proud of.
Hilton-Baird Collection Services Limited ■	22	25%	Our services are focused on maximising the recovery potential, and range from sales ledger recoveries and ledger monitoring to pre-insolvency ledger reviews, encompassing a valuation and estimated outcome statement (EOS) based on multiple scenarios.	With telephone-based communication at the core of our collections services, we tailor our approach to every ledger and debtor to maximise the recovery potential and utilise a range of contact methods. Panel provider for a mix of IPs and lenders.

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Financial asset recovery services (Table 1 continued)

Trading name	Years providing services	Approx % of turnover that relates to services for UK IPs	Services	How different to other providers
LPL Commercial Investigations ■	45	30%	LPL provides a bespoke debt collection services for insolvency practitioners. No win, – no fee arrangement. Our services include: sales ledger collections (all sizes of ledgers), outstanding director loan accounts, fees owing to the firm.	LPL's debt recovery experience and knowledge is unrivalled within the industry. Since 1978 LPL has worked with IPs all over the UK assisting with collections on small to large cases across all industry sectors
McQueen Partnership ■	1	80%	Attendance on site within 24 hours. Full credit control/debt collection service through to litigation. Collation of key documentation. Telephone verification to support EOS calculation. Contract review of key debtors. 'Rump end' ledger collection.	Communication is key. Our personal, proactive telephone recovery approach to debt recovery ensures fast, effective proven results in all sectors, with our clients ethos and reputation at the core of everything we do.
Naismiths Limited ■	60	15%	Business rescue and support; independent company audits; technical due diligence (New and existing, M&A, MBO, company health checks); debtor recovery; business advisory; turnaround; distressed developments (re-finance, build out, LPA receiver, monitoring).	We can help you from the early stages of company rescue, to working with third party creditors, business restructuring, turnaround and developing future business plans and exit strategies.
The Debt Recovery Bureau ■	8	25%	Collection of any invoice-based debts due by businesses or consumers. Charges based on a percentage of recoveries, rate depending upon profile of the debts (age, previous action, size, etc.).	We diligently pursue each debt, ensuring we obtain the best result. We can collect individual debts or debt books of any size. We particularly excel with those trickier debts left after the invoice finance company has collected all they need.

Financial asset recovery services (Table 2)

Trading name	Summary of fee structure(s) typically offered	Are you ever able to make an upfront payment and/or pay a guaranteed fee to an IP?	If yes, approx what % of the value of your work for IPs is completed on an upfront payment and/or guaranteed fee basis?	Do you offer an overseas debt collection service?	If yes, in how many jurisdictions?
Anvil Business Advisory Ltd ■	Our fees are flexible and are negotiated with the IP based on the complexity of each proposed recovery instruction.	No	0%	Yes	1
CCI Credit Management Ltd ■	No-win, no-fee commission – 10%-30% depending on whether UK, Europe or worldwide. Each case is assessed on its merits in discussion with the client to agree a fair price for our quality service.	Yes	0%	Yes	130
Credebt Ltd ■	We charge a no-win, no-fee rate of between 0.5% and 15%. This is dependent on the size of ledger as well as the age, industry, availability of books and records, etc. Early involvement produces results.	No	*N/A*	Yes	*n/s*
Delv Limited ■	Our services are usually provided on a fully contingent model. Fees charged as a percentage of the settlement received. Clients pay on receipt of settlement – there are no upfront or secondary fees.	Yes	2%	N/A	*N/A*
Global Corporate Solutions ■	Being a small firm wholly owned by its director, we have complete flexibility and so work with each individual IP to agree a fee structure or mechanism that all parties are happy with.	Yes	25%	Yes	25
GMG Asset Valuation Ltd ■	We can tailor our fee structure to suit the specific requirements of the IP. This can be based on a certain % of sale proceeds or fixed-fee basis.	Yes	5%	N/A	*N/A*
Hilton-Baird Collection Services Limited ■	Typically, contingency-based fee on monies recovered, but can also operate under hybrid or fixed-fee models.	No	*N/A*	No	*N/A*
LPL Commercial Investigations ■	Based on age of debt - standard fees (UK): 0-1 year = 14%; 1-2 years = 16%; 2 years + = 22%. However LPL's fees for sales ledger collection is flexible based on the size, complexity and age of ledger.	No	*N/A*	Yes	140

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Financial asset recovery services (Table 2 continued)

Trading name	Summary of fee structure(s) typically offered	Are you ever able to make an upfront payment and/or pay a guaranteed fee to an IP?	If yes, approx what % of the value of your work for IPs is completed on an upfront payment and/or guaranteed fee basis?	Do you offer an overseas debt collection service?	If yes, in how many jurisdictions?
McQueen Partnership (Track down/collect)	5%-30%	No	*N/A*	No	*N/A*
Naismiths Limited (Track down/collect)	*n/s*	No	*N/A*	N/A	*N/A*
The Debt Recovery Bureau (Track down/collect)	From 10% + VAT to 25% + VAT depending upon age, how much collection work has already been undertaken and size of debts. Always happy to discuss any particular books or individual debts.	No	*N/A*	Yes	10

Financial asset recovery services (Table 3)

Trading name	What has changed in the market in the last few years?	What changes do you expect to see in the market in the next 2-3 years?
Anvil Business Advisory Ltd (Track down/collect)	The pandemic has affected the willingness, and the ability to pay debts. Some are more willing than others! We have adapted to new criteria, and changed our attitude towards the new circumstances affecting companies that we are presented with, and which we must work around.	We believe the recovery market will be busier than ever as more companies try, and probably fail, to implement their own effective recovery strategies. Outsourcing to an experienced recovery company is the solution. Whatever happens, we will be ready to embrace the chameleon!
CCI Credit Management Ltd (Both)	The international market has grown as more companies are now exporting. Our ability to operate in the global market and offer our customers a collection services internationally is of great benefit.	Increased international debt recovery requirements as new lenders enter the overseas market which will require our specialist advisory knowledge in specific countries.
Credebt Ltd (Track down/collect)	The Covid period (for us this was March 2020 to September 2022 – 2.5 years) was very quiet with low levels of insolvencies and very few ledgers or debts to collect. This has still not recovered to pre-pandemic levels for insolvency firms.	Increased insolvencies for businesses with ledgers, therefore outside of retail and hospitality. More fraud cases and legal issues as directors become more and more desperate with the current pressures on businesses growing.
Delv Limited (Track down/collect)	The market has grown significantly as awareness of the opportunity to recover retrospective late payment compensation expands and as we build relationships with an increasing number of insolvency practitioners.	We see the market continuing to grow. Despite multiple Government and industry initiatives, late payment remains a significant issue for many businesses and is regularly quoted as a contributing factor in corporate insolvency.
Global Corporate Solutions (Track down/collect)	IPs in smaller practices now regularly face significant obstacles in pursuing lower value cases and claims. There appears to be a lack of interest amongst assignees and funders when looking at low value claims, with high ATE premiums and claim issue fees further compounding the problem.	I expect that the larger established firms will tighten their belts and toughen their criteria, resulting in more good cases and claims falling away as they are deemed too uneconomical to pursue. Continued delays and backlogs within the court system will likely compound the problem.
GMG Asset Valuation Ltd (Both)	More challenging to collect funds as contracts have become more robust and in many cases will be a counter claim. Key is to communicate and seek to find a mutually acceptable solution for all parties always taking into consideration costs versus benefit.	Can only see position continuing as is with more parties engaging with solicitors to challenge outstanding debts.
Hilton-Baird Collection Services Limited (Both)	A move away from traditional paper trails in favour of the use of online systems throughout the order to cash process can make obtaining proof of debt more complex, potentially reducing its collectability.	We expect to see more streamlined provision of receivables funding as providers increase their tech offerings which, in turn, will necessitate a deeper understanding of how this impacts collectability and ultimately the security of the lending.
LPL Commercial Investigations (Track down/collect)	Debt recovery is the second oldest industry in the world. What was then is pretty much the same as it is now. Whilst we cannot make people pay, LPL has the experience and know-how to make people want to pay.	Same same.
McQueen Partnership (Track down/collect)	The debt recovery market has experienced both growth and challenges. Increased investment in technology has had a positive and negative effect on results. Relying solely on technology may lead to missed opportunities, as it may not be able to handle complex situations that require human intervention.	The market will likely continue to face uncertainties and a higher level of indebtedness. Many businesses, especially SMEs, are concerned about survival, and a significant number of companies are at risk of collapse. The market is likely to see increased emphasis on cash and debt management.
Naismiths Limited (Track down/collect)	*n/s*	*n/s*
The Debt Recovery Bureau (Track down/collect)	It has certainly got busier, but with many disputed debts. Debtors are currently looking for any and all reasons not to pay, hanging on to as much cash as possible.	We expect the market to get busier and there to be some significant insolvencies over the next few years.

Key:
- = Value and/or sell business assets belonging to companies that are insolvent or in administration
- = Track down/collect monies owed to companies that are insolvent or in administration
- = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Business asset valuation & disposal services						
Trading name	**Years providing services to IPs**	**Approx % of turnover that relates to services to UK IPs**	**Services**	**How different to other providers**	**What has changed in the market in the last few years?**	**What changes do you expect to see in the market in the next 2-3 years?**
Axia VS ■	7	99%	Axia provides a range of services: business and asset sales, full valuation services, individual asset analysis, site inspections and clearances, security services, retention of title management, and other insolvency services.	Axia is adept at preparing IMs for business/asset sales, running SIP-16 compliant sales, managing prospective buyers, asset disposals, site closures. Partners are experienced negotiators, having completed many complex, high-value transactions.	Business assets are increasingly intangible, and it is important that value is realised within these intangible assets. More than ever, the sale approach needs to be proactive, transparent, and co-ordinated to be effective and maximise asset values.	Increased activity with restructures and insolvencies. Regulatory changes allowing greater flexibility for quasi-restructuring.
BPI Asset Advisory Ltd ■	5	90%	BPI Asset Advisory specialist surveyors deliver accurate valuations, uncompromised disposal advice and RICS standards for corporate recovery, secured lending, accounts valuation and insurance valuations across the UK.	BPI's full-service offering includes storage and our market-leading disposal portal www.bpiauctions.com. Combined with our highly proactive approach, we can complete sales faster and reduce costs saving time and money with no compromise on results.	Beyond the obvious economic factors, technology has been a key driver; from streamlining the disposal process through to marketing techniques. Investment in advanced technology has enabled us to meet client demand for reduced time and costs and still deliver the highest returns at the same time.	*n/s*
CCI Credit Management Ltd ■	35	25%	We can value portfolios of debt or single debts with a view to debt sale/purchase.	We will consider buying single debts and small portfolios which are often below the value that larger companies can be bothered with.	Many more opportunities to buy and sell debt. We also assist IPs in collecting out on portfolios to maximise their fee income and enable the closure of cases by buying debts that might be paying a nominal amount or might not be payable until a future date i.e. directors loans.	As Government assistance falls away (BBLs and CBBLs) businesses that would have failed pre-Covid, will fail and debt recovery/ sale opportunities will grow. Many more companies will be in distress and will require help from the insolvency profession.
European Valuations ■	10	40%	*n/s*	*n/s*	*n/s*	*n/s*
G J Wisdom & Company ■	36	50%	G J Wisdom & Co. auctioneers and valuers provides professional pre-liquidation asset valuation with in-house salerooms holding regular online and on-site auctions, combined with asset recovery, removal, and secure, fully insured storage facilities.	G J Wisdom & Co is regularly engaged by multiple insolvency agents on behalf of IPs to assist in physical removals and/or on-site auctions of assets to our salerooms for inclusion of assets into our online categorised auction sales.	We have seen a huge increase in the types of business that have entered into insolvency, and have dealt with many different business closures, which have included: factories of machinery, catering equipment, mobile phones, luxury goods, vehicles, broadcasting and film equipment, IT, boats and all stock.	We do not expect any change in demand or business closures in the immediate future, but would expect this to slow down over a 2-3 year period and stabilise from the results of Covid and subsequent Government-backed loans and grants that provided an artificial environment.
Gavel Auctioneers Limited ■	13	75%	We are an RICS regulated firm of valuers and auctioneers specialising in all aspects of plant and machinery and intellectual property, based in South Wales and covering the whole of the UK from our 32,000sq ft auction centre.	We can react quickly and efficiently to secure and uplift equipment with our own fleet of specialist vehicles and staff. Our skilled workforce are able to dispose of equipment from site or our auction centre via our own online auction platform.	Covid brought its own financial challenges. With the availability of Government support the insolvency market simply dried. Insolvencies returned with the ending of financial support when companies began to repay government BBL and CBILS loans.	An increase in insolvencies as a result of interest rises coupled with the latent effect of energy costs, the continuing war in Ukraine and the potential political unrest throughout the world.
GMG Asset Valuation Ltd ■	20	50%	Asset valuation and disposal services. Asset recovery and tracing. Secure storage premises throughout the UK. Management of vehicle hire fleets and maintenance issues. Online auction and tender sale facilities. Restructuring support/ options.	Our services cover the complete process from pre-insolvency analysis through to tracing, removal and disposal of assets. Our relationships with many funders can help IPs to ensure that all parties work together to achieve the best outcome.	There has been a wider spread of funders in the market who will finance a wide range of assets and, as a result, we are finding a greater percentage of assets subject to finance agreements, leaving fewer free assets available to IPs when looking to dispose of companies/generate funds for creditors.	One challenge for IPs will be ensuring that there is sufficient asset value in a business before taking appointments – it is important to engage with valuers pre-appointment so they fully understand the asset position.

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Business asset valuation & disposal services continued

Trading name	Years providing services to IPs	Approx % of turnover that relates to services to UK IPs	Services	How different to other providers	What has changed in the market in the last few years?	What changes do you expect to see in the market in the next 2-3 years?
Gordon Brothers ■	20	<5%	Gordon Brothers value, monetise and dispose of the complete range of tangible and intangible assets, utilising the experience and knowledge gained throughout its 120-year history to provide the best advice at all stages of a restructuring process.	Gordon Brothers' global network of offices provide real time expertise of local market activity which produces the best evidence and data of current market conditions and values. Leveraging the world's largest proprietary asset recovery database, Gordon Brothers deliver the insight and accuracy IPs expect.	*n/s*	*n/s*
Herts Valuations ■	20	100%	Insolvency valuation and asset disposal services throughout the UK. Joint founding member of National Association of Valuers & Auctioneers with 40 years' experience.	*n/s*	*n/s*	*n/s*
Hickman Shearer ■	25	20%	Hickman Shearer provides capital asset valuation and disposal services to support restructuring activities, fraud and litigation or formal insolvency mandates. We work across the UK with a network of global offices globally.	We specialise in key industrial sectors where we have excellent credentials and expertise with leading operators including broadcast and telecomms, food and agriculture, energy and utilities, pharma and healthcare, transport and infrastructure.	We have key relationships with many asset funders (ABL and lessors) and it is evident that they are seeking strategic consensual outcomes at an earlier stage in potential distress and where asset valuations are a key component of negotiation.	Legislation changes as a result of Brexit have yet to become understood, let alone effective. Sustainability and climate change will increasingly become a factor that will impact upon many companies, from automotive to mining, seeing many failing to embrace the opportunities for change. AI.
Hilco Valuation Services ■	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
Hilton-Baird Collection Services Limited ■	22	25	Often the largest asset, we specialise in the valuation and realisation of the sales ledger. Services include pre-insolvency ledger reviews and valuations, ledger monitoring and sales ledger recoveries.	Unlike hard assets, sales ledgers can contain hidden dilutions, reducing the collectable value and the ability to recover monies secured against them. We ensure the best outcome by uncovering the systems and paperwork underpinning the receivable.	Whilst a firm understanding of the order to cash process is key in establishing the realisable value of the sales ledger, advances in technology have meant supply chains and the myriad of systems underpinning these have become more complex.	With increased pressure due to economic conditions, we expect to see pre-insolvency sales ledger valuations become more commonplace, in order to provide insolvency practitioners and any associated lenders with valuable insight.
ITC Valuers ■	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*	*n/s*
JPS Chartered Surveyors ■	20	90	RICS valuations, asset recovery and sales by auction or negotiated. Experienced, professional asset management includes asset discovery, securing, exposure of opportunities, support in compliance with SIP. Dedicated secure document storage facility.	Fixed auction and storage facilities, director-led services, deep understanding of insolvency practitioners' requirements to enable proportionate, professional and appropriate response. Technology harnessed to constantly improve service to clients.	Significant increase in cases handled. The requirement for capacity to recover and subsequentially sell assets has resulted in the doubling of warehouse facilities to fulfil needs with recruitment drive. The firm handles almost twice as many instructions compared with prior to Covid, across most industries.	Continued increased instructions as the economy addresses the impact of Brexit, Covid, Crown Preference, Ukraine conflict. Rising interest rates, costs of materials and energy and the ongoing disruption to 'return to normal' from industrial action will continue to harm businesses in the near future.
Key Appraisal Limited ■	15	95%	Key Appraisal provides tangible/intangible asset and stock valuation and agency services for the corporate/personal restructuring sector. Its principal has over 33 years' experience in the industry, the past 15 years as owner/director of Key Appraisal.	We have an experienced and responsive infrastructure of professionals and utility service providers at our disposal, allowing us to offer a responsive and cost-effective advisory and agency solutions for our clients.	The sector has become much more focused on the importance of intangible assets and their value within an insolvent business, which has allowed far more businesses to be restructured and purchased by either an connected or unconnected party. Given that, unencumbered tangible assets have diminished.	Further regulation in the restructuring and appraisal and agency space can be expected as banks and governments make changes to deal with further globalisation of all industries and purchasers of insolvent businesses and assets. Mental health awareness is also becoming a focus for the industry.

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Business asset valuation & disposal services continued						
Trading name	**Years providing services to IPs**	**Approx % of turnover that relates to services to UK IPs**	**Services**	**How different to other providers**	**What has changed in the market in the last few years?**	**What changes do you expect to see in the market in the next 2-3 years?**
Lambert Smith Hampton	50	5%	The asset advisory team at LSH provides valuation and agency advice to insolvency practitioners in corporate restructuring and insolvency situations on property, plant, machinery and business assets throughout the UK.	We have over 40 experienced property and plant and machinery professionals and full national coverage with offices in England, Wales, Scotland and Northern Ireland.	We have seen lenders less reluctant to make formal appointments and more willing to work with borrowers allowing time to refinance, restructuring their lending or provide debt forgiveness. This has resulted in more advisory and consensual work as opposed formal appointments.	I think there will be a spike in formal appointments as interest rates increase and borrowers come off fixed rates. However, there are more lenders in the market and property prices are still holding up compared to the last recession.
Landwood Group	15	60%	Valuation, management and sale of property, business assets, and plant and machinery across a wide range of asset classes across the UK. Specialists in healthcare, hotels, leisure and development as well as all commercial assets and residential.	Director-led service with over 100 years' specialist experience in the insolvency market and a wide range of experience across the UK. Full service offering from 'day one' attendance and prompt initial advice to completion and site clearance.	*n/s*	*n/s*
Metis Partners Ltd	20	60%	Metis Partners is acknowledged as the market leader in IP valuation in UK and Europe. We uniquely benchmark IP valuation data against actual IP asset sales, which results in us being instructed by global restructuring, accounting firms and lenders.	Providing IP valuation advice for 20 years, carrying out both M&A IP valuations and R&B valuations. We also provide expert witness reports and testimony on the value of IP in many scenarios including alleged transfers of IP assets at undervalue.	A great deal!	What I can say for certain is we expect to see more economic icebergs emerging for business owners to steer around or crash into!
MGR Appraisals	14	90%	Valuation of business assets, including: plant and machinery; stock; goodwill/ ipr. Disposal of assets by online auction, private and tender.	Niche practice work undertaken by a director.	On smaller cases there are more desktop valuations in order to keep fees to a minimum.	Expect high-volume low-owned value cases on the basis that there has been a high-level of asset based lending. The problems the banks have experienced in the past with target based lending will be experienced by secondary lenders and invoice discounters.
New England Auctions	20	30%	New England specialises in commercial and industrial asset disposal globally. Our services include asset recovery, asset purchasing, asset advisory, warehousing, transportation, valuations, site closures, clearances and online auctions.	We specialise in industrial recovery, and we can react within hours due to our own 12,000 sq ft warehouse, and 20T overhead crane to handle large assets. We can handle recovery right through to settlement using our online auction platform.	The market has changed primarily due to Covid and Brexit. Businesses are struggling to recover, which means we are seeing our services required frequently. Due to our storage facilities, we are recovering larger assets and selling them online from our warehouse.	We are anticipating a higher rate of insolvencies due to the rise in interest rates. This ultimately will affect IPs as more companies will be struggling to pay their loans.
Pact Property & Assets Limited	30	70	Valuation, management, and sales of real estate, plant and machinery and business assets. Our experienced team provide cost effective advice ranging from desktop leasehold reviews to portfolio sales and auctions of plant and equipment.	With over 30 years of experience, our lead director has not only valued and sold real estate across the west country but was formally the lead plant auctioneer for Edward Symmons. This multi-sector knowledge sets us apart from other providers.	The pandemic, rising interest rates and slow growth has negatively affected the property market with prices falling across all sectors. Plant and business assets prices have remained relatively stable with quality being ever more important.	This will depend largely on the general economic climate and whether the country can avoid a recession. With inflation remaining high we expect interest rates to remain raised for some time. The expiry of fixed rate deals will cause stress in some sectors, in particular buy-to-let.

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Business asset valuation & disposal services continued						
Trading name	**Years providing services to IPs**	**Approx % of turnover that relates to services to UK IPs**	**Services**	**How different to other providers**	**What has changed in the market in the last few years?**	**What changes do you expect to see in the market in the next 2-3 years?**
Realise Solutions ■	9	95	Asset assessment, valuation, and disposal, including public auction. Any retention of title issues. 24/7 attendance. Secure storage for machinery, vehicles and stock.	When it comes to insolvency and asset recovery, time is of the essence. Our team of recovery professionals are able to quickly mobilise, secure and assess assets across a broad range of sectors, wherever they may be.	We have seen a vast increase and decline of certain assets in the market, as well as desirability. Specific sectors have flooded the market place reducing the value, and others have been harder to source, increasing the realisation.	We believe that the market will level back across, and the asset realisation on certain assets will remain level across the industry. Having the right buyers on your database, and keeping this updated, is key to moving forward.
Robson Kay Associates Ltd ■	20	80%	Robson Kay act as valuers, agents and auctioneers, primarily for insolvency practitioners. Insolvency is our specialism, which has enabled us to become expert in areas such as ROT, landlord rights and the latest SIP 16 requirements.	We have one of the largest dedicated auction sites in the country which allows us to quickly uplift and protect assets. This allows us to deal with ROT, finance company and other claims, whilst waiting for the company to enter into liquidation.	Pre-pack administrations rules have become more complex, which means the agent needs to be fully conversant with the relevant sections of the Insolvency Act. There is more scrutiny than ever before for all forms of connected party asset sales.	It is becoming ever more important to understand how to deal with intangible assets, as the growth in online businesses means the principal assets of insolvent companies are often domain names, databases and social media accounts.
Sanderson Weatherall LLP ■	>50	30	Sanderson Weatherall offers clients a comprehensive national service covering all sectors of plant, machinery, business assets and property. A national team of dedicated specialists focus on the restructuring and recovery market covering all sectors.	Sanderson Weatherall's national coverage across multiple asset classes is able to leverage our long standing national experience, to ensure the best outcomes for our clients. We are strengthened by a range of complimentary surveying disciplines.	The emergence of intangible assets as a discrete asset class, and the requirement to provide formal opinions of value in relation to those has increased markedly. The collateralisation of traditional assets, such as plant and machinery, to assist in exit from distress situations has also increased.	We would expect the importance of intangible assets to grow. With further requirements, around demonstrable marketing activities, to ensure optimal returns for creditors to increase further.
Thainstone Specialist Auctions ■	>20	40	To provide an independent and professional valuation, sale and appraisal service.	Scotland's largest team of valuers covering the whole of Scotland and beyond.	*n/s*	*n/s*
Williams & Partners ■	15	95	W&P provides specialist valuation services to insolvency practitioners, accountants and distressed private businesses. We provide detailed valuation reports, conduct asset disposals pre or post-appointment and undertake full marketing exercises for pre-pack admins.	W&P is owned/managed by a qualified, non-practising solicitor who has been a NAVA member for over 10 years, manages ROT claims on behalf of IPs, works with solicitors on all SPAs, and undertakes pre-pack admin work with full SIP 16 marketing reports.	The sheer volume of insolvencies has resulted in depressed prices across various markets. It has become more difficult to get detailed information from directors, and buyers are more cautious about what they buy. However, connected party sales are buoyant and continue to generate the best realisations.	The volume of insolvencies will continue to increase, particularly in the hospitality and leisure industries where high rent and rates remain an issue. Repaying Covid-era loans will continue to prove challenging whilst the economy stagnates, driving more businesses into liquidation.
Wilsons Auctions ■	87	0000	Wilsons Auctions provides the full suite of asset realisation services to insolvency practitioners. This includes, advisory, valuation and auctions. We span every category of asset and can work on personal bankruptcies as well as companies, with skilled, experienced and accredited staff.	Wilsons Auctions, as the largest independent auction service provider, holds a repertoire of accreditations. No other auction service provider can produce the same set of accreditations.	Covid played a major part in the slowing of the insolvency realms. Individuals and companies liquidated assets earlier in an attempt to keep the cash flow of the business alive.	It would appear that after the end of the financial support of the UK Government for the impact of Covid-19, there are more companies forced into liquidation as they cannot sustain the current cost of living crisis as well as repay loans etc. I would envisage a significant uplift in insolvency cases.

Key:
■ = Value and/or sell business assets belonging to companies that are insolvent or in administration
■ = Track down/collect monies owed to companies that are insolvent or in administration
■ = Both of the above

N/A = not applicable *n/s* = not supplied
Text in regular font = text supplied by the profiled company

Buyers' guide

Financial assets recovery services

Debt collection

Anvil Business Advisory Ltd
CCI Credit Management Ltd
Credebt Ltd
Global Corporate Solutions
GMG Asset Valuation Ltd
Hilton-Baird Collection Services Limited
LPL Commercial Investigations
McQueen Partnership
Naismiths Limited
The Debt Recovery Bureau

Overpayments recoveries

CCI Credit Management Ltd
Global Corporate Solutions
Hilton-Baird Collection Services Limited
LPL Commercial Investigations
McQueen Partnership
Naismiths Limited
The Debt Recovery Bureau

Late payment compensation fees on historic invoices

CCI Credit Management Ltd
Delv Limited
Global Corporate Solutions
Hilton-Baird Collection Services Limited
LPL Commercial Investigations
McQueen Partnership
Naismiths Limited
The Debt Recovery Bureau

Business assets disposed/sold

Plant, equipment & machinery in the following settings

Agricultural

BPI Asset Advisory Ltd
Gavel Auctioneers Limited
JPS Chartered Surveyors
Kumar & Company Limited
MBV - Middleton Barton Valuation
Wilsons Auctions

Construction/real estate

Gavel Auctioneers Limited
GMG Asset Valuation Ltd
Gordon Brothers
Herts Valuations
Hickman Shearer
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
MGR Appraisals
Pact Property & Assets Limited
Sanderson Weatherall LLP
Thainstone Specialist Auctions
Williams & Partners
Wilsons Auctions

Healthcare/social care

BPI Asset Advisory Ltd
CCI Credit Management Ltd
MBV - Middleton Barton Valuation
Wilsons Auctions

Hospitality

BPI Asset Advisory Ltd
Gavel Auctioneers Limited
Herts Valuations
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Williams & Partners
Wilsons Auctions

Leisure

BPI Asset Advisory Ltd
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Williams & Partners
Wilsons Auctions

Manufacturing/engineering/industrial

Axia VS
BPI Asset Advisory Ltd
Gavel Auctioneers Limited
GMG Asset Valuation Ltd
Gordon Brothers
Hickman Shearer
JPS Chartered Surveyors
Kumar & Company Limited
Lambert Smith Hampton
Landwood Group
MBV - Middleton Barton Valuation
New England Auctions
Pact Property & Assets Limited
Realise Solutions
Robson Kay Associates Ltd
Sanderson Weatherall LLP
Williams & Partners
Wilsons Auctions

Offices

Herts Valuations
MBV - Middleton Barton Valuation
MGR Appraisals
Williams & Partners
Wilsons Auctions

Other settings / sectors

BPI Asset Advisory Ltd
G J Wisdom & Company
Herts Valuations
Hickman Shearer
Wilsons Auctions

Retail

BPI Asset Advisory Ltd
Gordon Brothers
Herts Valuations
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
MGR Appraisals
Wilsons Auctions

Stock & inventory in the following settings

Agricultural

BPI Asset Advisory Ltd
MBV - Middleton Barton Valuation
Wilsons Auctions

Construction/property

Herts Valuations
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Williams & Partners
Wilsons Auctions

Healthcare/social care

BPI Asset Advisory Ltd
CCI Credit Management Ltd
MBV - Middleton Barton Valuation
Wilsons Auctions

Hospitality

BPI Asset Advisory Ltd
MBV - Middleton Barton Valuation
Williams & Partners
Wilsons Auctions

Leisure

BPI Asset Advisory Ltd
Herts Valuations
JPS Chartered Surveyors
Williams & Partners
Wilsons Auctions

Manufacturing/engineering/industrial

BPI Asset Advisory Ltd
G J Wisdom & Company
GMG Asset Valuation Ltd
Gordon Brothers
Herts Valuations
JPS Chartered Surveyors
Landwood Group
MBV - Middleton Barton Valuation
New England Auctions
Realise Solutions
Thainstone Specialist Auctions
Williams & Partners
Wilsons Auctions

Offices

Herts Valuations

Williams & Partners
Wilsons Auctions

Retail
Axia VS
BPI Asset Advisory Ltd
Gavel Auctioneers Limited
Gordon Brothers
Herts Valuations
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Williams & Partners
Wilsons Auctions

Transport assets

Aircraft
BPI Asset Advisory Ltd
GMG Asset Valuation Ltd
MBV - Middleton Barton Valuation
Wilsons Auctions

Boats
BPI Asset Advisory Ltd
GMG Asset Valuation Ltd
Gordon Brothers
MBV - Middleton Barton Valuation
Wilsons Auctions

Railway rolling stock
Hickman Shearer
Wilsons Auctions

Vehicles
BPI Asset Advisory Ltd
Gavel Auctioneers Limited
GMG Asset Valuation Ltd
Gordon Brothers
Herts Valuations
JPS Chartered Surveyors
Kumar & Company Limited
Lambert Smith Hampton
MBV - Middleton Barton Valuation
Pact Property & Assets Limited
Robson Kay Associates Ltd
Sanderson Weatherall LLP
Thainstone Specialist Auctions
Williams & Partners
Wilsons Auctions

Other transport assets
BPI Asset Advisory Ltd
G J Wisdom & Company
GMG Asset Valuation Ltd
Hickman Shearer
MBV - Middleton Barton Valuation
Wilsons Auctions

Intellectual property
Axia VS
BPI Asset Advisory Ltd
Gavel Auctioneers Limited
Gordon Brothers
Herts Valuations
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Metis Partners Ltd
Robson Kay Associates Ltd
Williams & Partners
Wilsons Auctions

Business brands
Gordon Brothers
Herts Valuations
JPS Chartered Surveyors
Wilsons Auctions

Other
Herts Valuations
Wilsons Auctions

‘Valuation-only’ services for business assets

Plant, equipment & machinery in the following settings

Agricultural
BPI Asset Advisory Ltd
Wilsons Auctions

Construction/real estate
Hickman Shearer
Wilsons Auctions

Healthcare/social care
BPI Asset Advisory Ltd
Wilsons Auctions

Leisure
BPI Asset Advisory Ltd
Leisure
Leisure
Wilsons Auctions

Manufacturing/engineering/industrial
BPI Asset Advisory Ltd
Hickman Shearer
Kumar & Company Limited
Lambert Smith Hampton
New England Auctions
Realise Solutions
Wilsons Auctions

Offices
Wilsons Auctions

Retail
BPI Asset Advisory Ltd
Wilsons Auctions

Other settings / sectors
Hickman Shearer

Stock & inventory in the following settings

Agricultural
BPI Asset Advisory Ltd
Hilton-Baird Collection Services
Wilsons Auctions

Construction/property
Hilton-Baird Collection Services
Wilsons Auctions

Healthcare/social care
BPI Asset Advisory Ltd
Wilsons Auctions

Hospitality
BPI Asset Advisory Ltd
Wilsons Auctions

Leisure
BPI Asset Advisory Ltd
Wilsons Auctions

Manufacturing/engineering/industrial
BPI Asset Advisory Ltd
Hilton-Baird Collection Services
Wilsons Auctions

Offices
Wilsons Auctions

Retail
BPI Asset Advisory Ltd
Wilsons Auctions

Transport assets

Aircraft
BPI Asset Advisory Ltd
Wilsons Auctions

Boats
BPI Asset Advisory Ltd
Wilsons Auctions

Other transport assets
BPI Asset Advisory Ltd
Wilsons Auctions

Railway rolling stock
Wilsons Auctions

Vehicles
BPI Asset Advisory Ltd
Kumar & Company Limited
Wilsons Auctions

Intellectual property
Kumar & Company Limited
Metis Partners Ltd
Wilsons Auctions

Business brands
Kumar & Company Limited
Landwood Group
Wilsons Auctions

Other
CCI Credit Management Ltd
Hickman Shearer
Hilton-Baird Collection Services
Wilsons Auctions

Regional services (by R3 region)

Eastern (including Cambridge, Ely, Norwich, Peterborough)

Herts Valuations
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Williams & Partners
Wilsons Auctions

London & South East (including Brighton and Hove, Canterbury, Chichester)

Axia VS
G J Wisdom & Company
Gordon Brothers
Herts Valuations
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
Kumar & Company Limited
Lambert Smith Hampton
MBV - Middleton Barton Valuation
Sanderson Weatherall LLP
Williams & Partners
Wilsons Auctions

Midlands (including Birmingham, Coventry, Derby, Leicester, Lichfield, Lincoln, Nottingham, St Albans, Stoke-on-Trent, Wolverhampton, Worcester)

BPI Asset Advisory Ltd
CCI Credit Management Ltd
GMG Asset Valuation Ltd
Gordon Brothers
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
Kumar & Company Limited
MBV - Middleton Barton Valuation
MGR Appraisals
New England Auctions
Williams & Partners
Wilsons Auctions

North East (including Durham, Newcastle upon Tyne, Preston, Sunderland)

BPI Asset Advisory Ltd
Gordon Brothers
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Wilsons Auctions

North West (including Carlisle, Chester, Lancaster, Liverpool, Manchester, Salford)

BPI Asset Advisory Ltd
GMG Asset Valuation Ltd
Gordon Brothers
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
Landwood Group
MBV - Middleton Barton Valuation
Robson Kay Associates Ltd
Wilsons Auctions

Northern Ireland

Hilton-Baird Collection Services
MBV - Middleton Barton Valuation
Wilsons Auctions

Scotland

GMG Asset Valuation Ltd
Hilton-Baird Collection Services
MBV - Middleton Barton Valuation
Thainstone Specialist Auctions
Wilsons Auctions

South West and Wales (including Bath, Bristol, Exeter, Gloucester, Hereford, Plymouth, Truro, Wells)

Gavel Auctioneers Limited
Gordon Brothers
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Pact Property & Assets Limited
Wilsons Auctions

Southern & Thames Valley (including Oxford, Portsmouth, Salisbury, Southampton, Winchester)

Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Realise Solutions
Williams & Partners
Wilsons Auctions

Yorkshire (including Bradford, Kingston upon Hull, Leeds, Ripon, Sheffield, Wakefield, York)

BPI Asset Advisory Ltd
GMG Asset Valuation Ltd
Gordon Brothers
Hickman Shearer
Hilton-Baird Collection Services
JPS Chartered Surveyors
MBV - Middleton Barton Valuation
Wilsons Auctions

View from the lobby

Stuart McBride gives an update on R3's policy work on IP and fintech regulation, and its lobbying over new legislation and director disqualifications

The overlap between spring and summer has seen the external affairs team working on a wide range of policy areas – economic crime, crypto asset regulation, MVLs and director disqualification, as well as keeping up our regular commentary on insolvency and business distress trends.

This list is only going to get longer as movement is expected on the Government's plans for the future of IP regulation and for reviewing the personal insolvency framework as we head into the autumn and winter.

Crypto asset campaigning

Crypto asset regulation has been a key area of policy for our team this year. The Government is planning to establish a new regulatory framework for the sector and took the next step towards this with the '*Future financial services regulatory regime for crypto assets*' call-for-evidence.

It quickly became clear that developing a framework for this industry that includes guidance for the profession on managing crypto asset insolvencies is going to be a challenge.

Fortunately, the Government is very much prepared to listen to advice at this stage – and with a response expected once parliament returns in the autumn, it's likely that there will be a lot more opportunities to influence the shape and structure of the proposed framework.

Roundtables return

The team has also been busy planning and delivering our revived roundtable programme, which provides an opportunity for members to help refine our policy positions in a number of areas.

Since the last issue of *Recovery*, our team has held two further roundtable events with members from across the country. Our first explored the crypto asset consultation, and provided valuable insight and inputs for our response, while our second looked at the state of the special situations M&A market.

The special situations roundtable, which was hosted by Addleshaw Goddard, shone a light on the state of the M&A market and the variance in attitudes between the different sizes of banks towards firms who are struggling.

> **"The debate saw the minister for business and trade Kevin Hollinrake agreeing the Government 'can go further on insolvency reform' and that 'it is the Government's intention to move towards a system of regulation with a single independent regulator'"**

It also highlighted a need for more consistent policy from HMRC in this area – something we'll pursue going forward.

Thank you to everyone who attended our two roundtables – and if you're interested in taking part in future ones, please get in touch.

Working with Westminster

The economic crime and corporate transparency bill has now completed its passage through the House of Lords, with the amendments proposed by the upper chamber under consideration at the time of writing.

We have briefed peers of our concerns around the bill at every opportunity during its passage through the Lords and had a number of constructive meetings as the bill progressed.

However, their focus was on other aspects of the draft legislation, so we have had no further progress in terms of amendments to the bill – but we will take every opportunity to put the profession's concerns to parliamentarians as the bill enters the final stages of its journey towards royal assent.

Back in the Commons, a Westminster Hall debate on director disqualification in mid-June saw R3 mentioned by a shadow minister – and some light shed on the Government's plans for the future of insolvency regulation.

Our public affairs team briefed the shadow minister for business, energy and industrial strategy Seema Malhotra on our concerns around the Government's approach to director disqualification and were delighted to see the shadow minister mention our members' concerns around the disparity between the number of reports made about director misconduct and the amount of director disqualifications that take place every year.

The debate also saw the minister of state for business and trade Kevin Hollinrake agreeing that the Government "can go further on insolvency reform" and that "it is the Government's intention to move towards a system of regulation with a single independent regulator".

With parliament due to return in September, we will be urgently seeking further information on the forthcoming proposals.

Making the news

Insolvency and restructuring remain areas of interest for the media. Our commentary on the monthly and quarterly insolvency statistics in England and Wales, and Scotland, continues to be well received by regional, national and trade media alike, with R3 spokespeople regularly featuring in stories in outlets like *PA*, *The Times* and *The Herald* about the latest trends.

Our analysis of business and business distress trends across the UK through our partnership with Creditsafe means that the chairs of the R3 nations and regions continue to regularly feature in the press covering their areas of the UK.

R3 spokespeople are also regularly asked to comment on a variety of other issues related to the profession – briefing iNews about Crown preference and wrongful trading, and *Global Restructuring Review* about the UK's planned adoption of the Uncitral model laws, while president Nicky Fisher spoke to *Insolvency Insider* and *Global Turnaround* about her plans for her year in office.

Stuart McBride is senior communications manager at R3

R3 contacts

Executive

Caroline Sumner Chief executive officer
T 020 7566 4207
E caroline.sumner@r3.org.uk

Technical

Ben Luxford Head of technical
T 020 7566 4218
E ben.luxford@r3.org.uk

Moira Fitzpatrick Technical manager
T 020 7566 4210
E moira.fitzpatrick@r3.org.uk

Training Academy

Robert Beer Head of training
T 020 7566 4215
E robert.beer@r3.org.uk

Alexander Carver Training coordinator
T 020 386 91035
E alexander.carver@r3.org.uk

Miya Hukins Training administrator
T 020 7566 4229
E miya.hukins@r3.org.uk

External Affairs

Anthony Walters Head of external affairs
T 020 7566 4220
E anthony.walters@r3.org.uk

Stuart McBride Senior communications manager
T 020 7566 4214
E stuart.mcbride@r3.org.uk

Kajal Kalia Public affairs manager
T 020 7566 4202
E kajal.kalia@r3.org.uk

Amelia Franklin Communications officer
T 020 7566 4203
E amelia.franklin@r3.org.uk

Thomas Chivers Public affairs and policy officer
T 020 7566 4227
E thomas.chivers@r3.org.uk

Membership

Andrew Heffernan Head of member services
T 020 3869 1034
E andrew.heffernan@r3.org.uk

Freddie Webster Senior member engagement executive
T 020 7566 4230
E freddie.webster@r3.org.uk

Shemin Varma Membership officer
T 020 7566 4211
E shemin.varma@r3.org.uk

Events

Nicola Pogson Senior event manager
T 020 3987 9918
E nicola.pogson@r3.org.uk

Mercedes Lopez Senior events organiser
T 020 7566 4236
E mercedes.lopez@r3.org.uk

Lottie Condron Events organiser
T 020 7566 4233
E lottie.condron@r3.org.uk

Richard Broekman Events organiser
T 020 3989 8774
E richard.broekman@r3.org.uk

Marketing

Neill Howard Marketing manager
T 020 7566 4219
E neill.howard@r3.org.uk

Ella Curle Marketing executive
T 020 7566 4209
E ella.curle@r3.org.uk

Office

Harvinder Kular Head of finance & operations
T 020 7566 4213
E harvinder.kular@r3.org.uk

Zuzana Kyselova Accountant
T 020 7566 4226
E zuzana.kyselova@r3.org.uk

Fiona Connor Office and finance assistant
T 020 7566 4231
E fiona.connor@r3.org.uk

R3 Association of Business Recovery Professionals

3rd Floor (East), Clerkenwell House,
67 Clerkenwell Road, London EC1R 5BL
T 020 7566 4200
E association@r3.org.uk
www.r3.org.uk

Advertisers' index

Clive Emson Land and Property Auctioneers	**34**
Compass Evaluator Reports Limited	**52**
DELV	**45**
Forthcoming R3 events 2023	**7**
Global Corporate Solutions	**42**
JPS Chartered Surveyors	**38**
Lambert Smith Hampton	**45**
Landwood Group	**42**
Manolete	**24**
Marsh	**15**
R3 SPG Forum 2023	**7**
R3 Training Academy	**Inside back cover**
Specialist Risk Insurance Solutions Limited	**Outside back cover**
Turnkey IPS Cloud	**Inside front cover**
Wilsons Auctions	**40**

R3 Training Academy

The R3 Training Academy is designed to suit a range of learning styles and preferences, which enable professionals to grow and develop throughout their career in the insolvency and restructuring profession.

Upcoming Training Academy eLearning

Creditors Voluntary Liquidations (CVL) Refresher Series

This eLearning training is aimed at insolvency professionals who have basic experience of insolvency, but have not administered CVLs previously and as a refresher for staff and IPs who are returning to deal with CVLs.

Creditors Voluntary Liquidations (CVL) represent the vast majority of corporate insolvencies, though the nature of these voluntary liquidations is often misunderstood. Join Julia McKay on this eLearning series as we explore CVLs from initial consultation to completion.

Introduction to Insolvency Certification

Consisting of 21 sessions, short tests and case studies, this course equips attendees with practical knowledge and an understanding of all insolvency procedures.

On completion of this certification, you will be R3 recognised as a having a Principles level understanding in the Insolvency profession. If you have New Professionals in your staff cohort, book now, or speak to our team regarding a group booking of 5 or more staff to get a discounted rate.

To find out more go to www.r3training.org.uk

SR Insurance Solutions

INSOLVENCY SPECIALISTS

With the number of insolvencies increasing it is more important than ever to work with an insurance partner with the knowledge and experience to support you through this period.

WHY WORK WITH US?

- A dedicated Client Executive and Client Advisor to manage the relationship and support you with your day-to-day queries
- Site visits to ensure the most competitive cover is obtained
- Client Service Portal allowing 24/7 access to your policies online
- An award-winning claims team helping you to maximise claims payments
- Defer payments of premiums at no cost

Association of Business Recovery Professionals R3 Rescue Recovery Renewal

We have worked with R3 for over 30 years and our commitment to providing outstanding service remains higher than ever.

SRG A Specialist Risk Group Company

Investor in Customers Gold 2021

Chartered Insurance Brokers

WE'RE HERE WHEN YOU NEED US

Get in touch to find out how we can support your insolvency practice:

Adam Loveitt
0115 908 4931
aloveitt@specialistrisk.com

srinsurancesolutions.co.uk

RECOVERY **Autumn** 2023 **SURVEY: Asset realisation services**